

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S  
APPENDIX**





# 77-1197

## United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1197

UNITED STATES OF AMERICA,

*Appellee,*

—v.—

WILLIAM EUGENE ROBINSON,

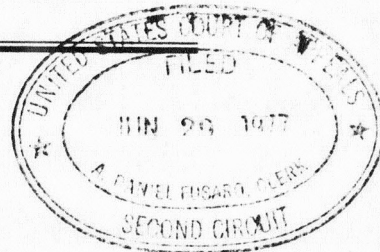
*Appellant.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

### APPENDIX TO BRIEF FOR THE APPELLEE

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1 THE FOLLOWING OCCURRED ON FEBRUARY 1, 1977, AFTER THE  
2 SELECTION OF THE JURY AND ALTERNATES:

3 THE COURT: Except as stated at the Bench,  
4 are both counsel satisfied with the jury as chosen?

5 MR. PICKERSTEIN: The Government is  
6 content, your Honor.

7 MR. GOLDBERGER: The defendant is content.

8 THE COURT: The Clerk will proceed to  
9 swear in the petit jury.

10  
11 \* \* \* \* \*

12  
13  
14  
15  
16 I hereby certify that the foregoing excerpt is  
17 a true and correct transcript of my stenographic  
18 notes.

19 

20 Official Court Reporter

21  
22  
23  
24  
25  
/A.  
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1 THE FOLLOWING TRANSPIRED ON FEBRUARY 15, 1977:

2 (In the presence of the jury):

3 MR. PICKERSTEIN: May it please the Court,  
4 and ladies and gentlemen of the jury.

5 I first want to take this opportunity to  
6 thank you for your patience in listening to this  
7 case. It has been a relatively simple case, and I  
8 want to take this opportunity to go over the  
9 Government's evidence with you, and discuss some of  
10 the facts in this case that I think bear your close  
11 examination.

12 To begin with, what we are faced with here  
13 on trial today is not a complex bank robbery.  
14 There is no question but that on February 18th,  
15 1975 the Trap Falls office of the Connecticut  
16 National Bank in Shelton, Connecticut, was robbed.  
17 There is no question that it was robbed, by three  
18 men.

19 How do we know that? Let's look at the bank,  
20 and let's look at the scene in the bank, at 1:55  
21 p.m. on February 18, 1975.

22 There were two employees in the bank that  
23 day, Retta Mondulick and Robert Beach. And you heard  
24 both of them testify on this witness stand before you,  
25 ladies and gentlemen.



1           The Trap Falls office is not a large bank.  
2           You heard Mr. Welch testify to that. As a matter  
3           of fact, it is a very small bank, six or eight feet  
4           from the tellers' counter to the front door.

5           Welch and Mondulick at that time were  
6           having lunch. Retta was having a smoke. And two  
7           men came into the bank. One man walked over to  
8           the counter where they were standing, and asked  
9           about employment in the bank. The other man walked  
10          over to the far end of the bank.

11          There was some discussion that that man had  
12          with Mondulick and Welch, concerning employment at  
13          the bank. The man was told that if he wanted to  
14          apply for employment, he had to go to the main  
15          office in downtown Bridgeport.

16          Mondulick and Welch began to write out  
17          directions -- I believe their testimony was that one  
18          was writing the directions and one was telling the  
19          man where to go. When, all of a sudden, someone  
20          else says "This is a stickup."

21          And, in fact, it was a stickup, ladies and  
22          gentlemen. The two people in the bank produced  
23          weapons, held them at the tellers, and robbed the  
24          bank of some \$2034.

25          Welch and Mondulick both testified that they



1 would never forget the face of the man that stood  
2 in front of them and robbed them.

3 We know that David Tate participated in the  
4 robbery. We know that because David Tate pleaded  
5 guilty to participation in the robbery. He stood on  
6 that very witness stand himself, and he described  
7 his participation in the robbery. And who did he  
8 tell you, ladies and gentlemen of the jury, partici-  
9 pated in the robbery with him? The Defendant,  
10 William Eugene Robinson.

11 So we have three people that were there.  
12 We have David Tate, we have Mondulick, and we have  
13 Welch.

14 Now, there came a time when a third man  
15 entered the bank. The third man, ladies and gentle-  
16 men, was masked. You could see that when you  
17 examine the photographs, the bank surveillance  
18 photographs, that are in evidence, and will be with  
19 you in the jury room.

20 The third man had a shotgun, and he pointed  
21 the shotgun at the tellers, and he intimidated the  
22 tellers, and he assisted in the taking of money from  
23 them.

24 The robbers in the bank, ladies and gentle-  
25 men of the jury, were in there, in the bank, two and

1 a half minutes. During that period of time, the  
2 two tellers in the bank, Robert Welch and Retta  
3 Mondulick, were concerned, I suggest to you, with two  
4 things: They were concerned with the weapons that  
5 were pointing at them -- and that is a very  
6 terrifying situation to be in, to have a weapon  
7 pointed at you. And they were concerned with the  
8 faces of the robbers. They looked at the robbers,  
9 and they testified that they will never forget those  
10 faces as long as they live.

11 Examine, if you will, ladies and gentlemen,  
12 the opportunity that the two bank tellers had to  
13 look at the Defendant Robinson. He came into the  
14 bank; he spoke with them about employment. He was  
15 standing right in front of Welch and Mondulick.  
16 This was while the tellers had some concern, but be-  
17 fore anyone had announced that this is a stickup.

18 There were suspicious, yes. Why were they  
19 suspicious? Because the vehicle in which the robbers  
20 had come had pulled up to the bank in a manner in  
21 which customers ordinarily do not come in. And they  
22 were prudent tellers, and I think they acted quite  
23 properly: They locked up most of the money.

24 When Robinson entered that bank, ladies and  
25 gentlemen of the jury, they had ample opportunity to



1 look at his face. And that face is burned into  
2 their minds. They will never forget that face.  
3 They had never been in a situation before similar  
4 to this. Hopefully, they will never be in a  
5 situation like this again.

6 But, their concern was twofold: The face of  
7 the robber, and the weapons that were pointed at  
8 them.

9 Subsequent to the robbery, both of the  
10 tellers were shown, as we lawyers refer to,  
11 photospreads. You remember the testimony from the  
12 witness stand, they were each shown three spreads.  
13 The third spread, ladies and gentlemen of the  
14 jury, in which the Defendant, Robinson's picture  
15 appeared.

16 Now, what happened? Examine very carefully  
17 what happened when each of the tellers examined the  
18 spread.

19 Welch went through the spread, and he paused  
20 at the fifth picture, which is in evidence. He said  
21 this resembles the robber, and was told by the  
22 agent that was demonstrating the spread to him  
23 "Go on, go through the whole spread." He wasn't  
24 told who the robber was; he wasn't told whether  
25 he had made a right or wrong identification. He



1 was simply told to go through the spread.

2 And he did. And he came to the eighth  
3 photograph, a photograph of the Defendant, Robinson.  
4 And he said "I'm almost positive this is the man  
5 at the counter."

6 Mondulick was also shown the same spread.  
7 She went through the spread, went to the eighth  
8 photograph, and identified the Defendant, William  
9 Eugene Robinson.

10 How did both tellers identify the Defendant,  
11 ladies and gentlemen of the jury? Because they  
12 were there, and because he was there.

13 Thereafter, on June 5, 1975 an incident  
14 occurred in the United States Courthouse in New Haven,  
15 about which we have heard a lot of testimony. You  
16 recall Mondulick testified about it, and Welch  
17 testified about it, and Peter Dorsey testified  
18 about it.

19 And on that day, Mondulick and Welch were  
20 in the hallway outside of the courtroom, awaiting  
21 some pre-trial motions in this case. What happened?  
22 Robinson got off the elevator and started walking  
23 along the corridor by them.

24 And they looked up -- Mondulick looked up,  
25 and she was frightened. She was terrified. You

1 heard her testimony: She gasped. She said "That's  
2 the man." Welch also identified Robinson at that  
3 time.

4 Now, ladies and gentlemen, no one had told  
5 Welch or Mondulick that Robinson was going to be  
6 there. They didn't know that Robinson was going to  
7 be there. They had never seen Robinson in person, -  
8 except for one time, and that was at 1:55 p.m. on  
9 February 18, 1975, in the Trap Falls office of the  
10 Connecticut National Bank. That's when they saw  
11 him. That face was burned into their minds. And  
12 when they saw him in that completely uncontrolled  
13 and inadvertent situation in the court, outside of  
14 the courtroom, they identified him. That's the man  
15 that robbed them.

16 But, ladies and gentlemen, we have more than  
17 just Mondulick and Welch's testimony. We have the  
18 testimony of David Tate. David Tate is what the  
19 law refers to as an accomplice. Judge Clarie will  
20 instruct you as to the law of accomplice testimony.

21 Ladies and gentlemen of the jury, we urge  
22 you to examine David Tate's testimony very carefully.  
23 What did Tate testify to?

24 On the morning of the robbery, he was sick.  
25 He was a narcotics addict; he was using heroin. He

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1 needed money. No one quarrels with that fact. And  
2 he went to a pool room up by the Terrace on  
3 Reservoir Avenue, and he sees the Defendant, Robinson,  
4 and he testified that he knew the Defendant, Robinson.  
5 He has seen him around.

6 Robinson asked him if he wanted to make  
7 some money. Tate said yes. So they get into a car,  
8 a big, black Cadillac, with the third man, Luther  
9 Fleming, and off they go.

10 And first they go south on 95, and they  
11 look at one bank, and they say no, there are too  
12 many people around that bank; we don't want to rob  
13 it. They turn around, come back up, and finally  
14 find their way to Shelton, and find the Trap Falls  
15 office.

16 And that, ladies and gentlemen, is a good  
17 bank for them to rob. There were no customers in  
18 the bank, there were only two tellers in the bank.

19 But, look at what Tate says: He and Robinson  
20 went into the bank together. Tate went off to the  
21 side. He jumped over the counter. Why did he jump  
22 over the counter? Because the latch on the gate  
23 wasn't working. You heard Mondulick and Welch  
24 testify to that, and you heard Tate testify to  
25 that, that he was the man behind the counter, right

1 in front of the drawers. Look at the bank  
2 surveillance photographs; you'll see David Tate  
3 there. Nobody questions that David Tate was in the  
4 bank.

5 Well, subsequent to the robbery, David Tate  
6 was apprehended. And David Tate was trying to make  
7 a deal for himself, ladies and gentlemen. The  
8 Government doesn't quarrel with that: He was trying  
9 to make a deal for himself. He wanted to get out  
10 of prison. And the Government wouldn't let him  
11 out of prison. And he entered a plea of guilty to  
12 the charge of bank robbery. And still he wouldn't  
13 cooperate with the Government. In fact, the  
14 Government called him to a grand jury and gave him  
15 immunity, and still with the grant of immunity he  
16 wouldn't cooperate.

17 And then there came a time when David Tate  
18 decided to cooperate. I don't deny to you, ladies  
19 and gentlemen of the jury, that the Government  
20 has made certain promises to David James Tate.

21 Look at what those promises are: The  
22 Government promised David Tate that if he testified  
23 that he would purge himself of a contempt sentence  
24 that was imposed upon him for failure to testify  
25 before the grand jury; that he would be placed in



1 an institution suitable to himself, and that his  
2 cooperation with the Government would be made known  
3 to the United States Parole Commission.

4 And, indeed, there came a time when David  
5 Tate filed a motion to reduce his sentence, and the  
6 Government did not oppose it.

7 But, look at all of the circumstances  
8 around David James Tate. I submit to you, ladies  
9 and gentlemen of the jury, that David Tate is a  
10 pathetic human being. He is a drug addict. He  
11 committed crimes in the past -- four felonies, he  
12 testified from the witness stand.

13 But now he is a man who is trying to re-  
14 habilitate himself. He is trying to do something  
15 with his life. He has got a lot of time to do it,  
16 and he is trying to make something of himself.

17 Ladies and gentlemen, the question you must  
18 ask yourselves when you get into the jury room, is  
19 a man like this, who has admitted his participation  
20 in this crime, who is trying to make something of  
21 himself, would a man like this falsely implicate  
22 someone else in the robbery? Would David Tate  
23 falsely implicate William Robinson in this robbery?  
24 I submit to you, ladies and gentlemen, that the  
25 answer is no, he would not.

1           Indeed, poor David Tate, after the robbery,  
2 when the robbers went to an apartment to split up  
3 the proceeds, he got \$400. They didn't even give  
4 him a full share of the money. \$400 out of the  
5 take of \$2400.

6           Ladies and gentlemen of the jury, examine  
7 David Tate very carefully, as you must all the  
8 witnesses. And ask yourselves the question would  
9 he falsely implicate anyone in this bank robbery?

10           But we look at the other side of the coin,  
11 ladies and gentlemen. We have heard, and I have  
12 tried to summarize as best I can -- and of course  
13 it is not my recollection of the facts that govern,  
14 it is yours -- Judge Clarie will instruct you on  
15 that.

16           Three people participated in the robbery.  
17 Mondulick, Tate and Welch. Let's look at the  
18 other side of the coin, and let's look at Willie  
19 Robinson.

20           Where was Willie Robinson on February 18,  
21 1975? According to his testimony, he was writing  
22 numbers. First he was writing numbers the morning  
23 up at Beardsley Terrace, then he got into a car,  
24 or paid somebody some money, and they drove him  
25 over to Stratford Avenue, where he had a shop. And

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1 at Stratford Avenue, he met his friend, Joe  
2 Burroughs, his friend and employee.

3 How do they remember what happened on  
4 February 18, 1975? Burroughs remembers very well:  
5 He had to go to the unemployment office; he had to  
6 get his check. And so Burroughs stands on the  
7 witness stand and tells you, ladies and gentlemen,  
8 that he saw Willie Robinson at about 1:00 or 1:30  
9 that afternoon, and then left and went and got his  
10 check, and was back before three o'clock, when the  
11 first number came out.

12 Joe Burroughs doesn't remember very much of  
13 anything else, but he remembers February 18th very  
14 well, because he had to go to the unemployment  
15 office.

16 Examine, ladies and gentlemen of the jury,  
17 the records of the unemployment compensation division  
18 of the State Labor Department that have been put in  
19 evidence, and that you will have with you in the  
20 jury room before you. You heard Mr. Kegler's  
21 testimony this morning. What do those records  
22 show?

23 Joe Burroughs was not paid any unemployment  
24 on February 18, 1975. He got his last check on  
25 February 10, 1975, and he didn't go back to the

1 unemployment office, according to the unemployment  
2 office records, until August of 1975.

3 Remember that date, February 10th. The bank  
4 wasn't robbed on February 10, 1975; it was robbed  
5 on February 18, 1975.

6 Willie Robinson, he is a numbers runner; he  
7 admits that on the witness stand. He sees a lot of  
8 people, deals with a lot of people during the course  
9 of the day. None of those people have names; they  
10 all have initials. The only person that saw him,  
11 that testified here today, is Joe Burroughs.

12 I submit to you, ladies and gentlemen of  
13 the jury, Joe Burroughs is wrong; that he did not go  
14 to the unemployment office on February 18th. He was  
15 no where near the unemployment office on February 18th.

16 And what do we have Robinson doing? Well,  
17 he testified that on that date, he was with Burroughs  
18 until about 11 o'clock that night. The next day he  
19 got up and he wrote numbers again. And then he made  
20 his way down to Pennsylvania, where he drove a truck.  
21 His employment records at his employer, Carolina  
22 Freight Lines are in evidence, ladies and gentlemen.  
23 And look at them very carefully, as well.

24 Robinson doesn't work the whole month of  
25 January; he doesn't work the whole month of February --



1        untill late on February 19th, or February 20th.

2        Late in the evening of the 19th or 20th, the date  
3        after the robbery, when he starts driving a truck  
4        again down in Pennsylvania. What better place to  
5        go if you are being looked for for committing a  
6        bank robbery, than to Pennsylvania.

7                And remember Special Agent Smith's testimony.  
8        When Special Agent Smith arrested Robinson, he asked  
9        him where he was on the 18th. And recall what  
10       Special Agent Smith said from that witness box.  
11       Smith said that Robinson told him that he was with  
12       a man named Willie Jackson, and at about 6:00 or  
13       6:30 on the 18th, he left for Pennsylvania.

14               That's not Robinson's testimony in this  
15       trial, ladies and gentlemen. He claims that he left  
16       for Pennsylvania on the 19th.

17               Did Robinson once mention Joseph Burroughs'  
18       name to Special Agent Smith? No. By his own  
19       testimony he was with Joe Burroughs all that day,  
20       the whole day of the bank robbery. Robinson and  
21       Burroughs were together.

22               But, then there comes a time when Robinson  
23       comes back from Pennsylvania. He has spoken to  
24       his wife, and his wife told him that the police had  
25       broken down the door to his apartment. And Robinson

1 testified that he wanted to come back and straighten  
2 it out.

3 Back he comes, and he goes to the Bridgeport  
4 Police Department. And he asks them if anybody was  
5 looking for him. And the police say no, but "We'll  
6 check around." And they call the FBI, and the FBI  
7 comes and arrests him.

8 Ladies and gentlemen of the jury, I submit  
9 to you that those are the actions of a man who thinks  
10 he can beat the rap. But they are not the actions  
11 of an innocent man, but one who thinks he can beat  
12 the rap.

13 What does Robinson do? What does Robinson  
14 do after he is arrested? He is shown a photograph,  
15 a bank surveillance photograph of the robbery,  
16 Government's Exhibit 13. The photograph is put in  
17 front of him by Special Agent Smith, and Robinson  
18 looks at it. And what does he say? He points out  
19 and says "That's Tate."

20 He denied that from the witness stand, but  
21 you heard Special Agent Smith, he showed him the  
22 photograph and Robinson said "That's Tate." No  
23 question in his mind at all about that.

24 Consider that in analyzing all of his testi-  
25 mony, ladies and gentlemen of the jury. Look at the

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1 surveillance photographs. They are not good  
2 photographs, ladies and gentlemen. They are not  
3 good photographs at all. But as you look at the  
4 photographs, think of the testimony that you heard.  
5 Think of Mondulick; think of Welch; think of David  
6 Tate.

7 Look at the coat, this coat, Government's  
8 Exhibit 12. Robinson admits it is his coat. There  
9 seems to be no question about it. Look at the  
10 coat, and look at the color of the coat. Look at  
11 the coat on the bank robber at the counter in the  
12 bank surveillance photograph.

13 And then the defense calls Arthur Sweeney.

14 Mr. Sweeney testifies that he overheard a  
15 conversation between Tate and someone named "Eyes"  
16 in the jail, in which Tate was talking about setting  
17 up Robinson for the bank robbery.

18 First of all, look at Mr. Sweeney. Enumerable  
19 felony convictions. He admits them all from the  
20 stand. Psychiatric problems; he admits them from  
21 the stand. Is this a witness, ladies and gentlemen  
22 of the jury, upon whose testimony you would make an  
23 important decision in your life? I submit the  
24 answer to that is no.

25 I don't know what, if anything, Mr. Sweeney

1       overheard. But you must compare the testimony,  
2       all of the witnesses in this case, one with the  
3       other. Look at Sweeney; look at Tate. Decide  
4       for yourselves who was more believable. Decide  
5       for yourselves who had an interest in testifying.

6               Ladies and gentlemen, the case boils down  
7       to the testimony of three people: Mondulick,  
8       Welch and Tate. Ask yourselves, when you retire to  
9       deliberate in the jury room, are Mondulick and  
10      Welch so mistaken? Is Tate so wrong, that all of  
11      their testimony is a fabrication? That all of  
12      their testimony is a mistake?

13             I submit to you, ladies and gentlemen of  
14      the jury, the answer is no. Mondulick and Welch  
15      were there at 1:55 p.m. on February 18, 1975.  
16      They saw the Defendant, Robinson. They saw him  
17      armed, in the bank, robbing it.

18             Tate was there. He saw Robinson. He  
19      participated with Robinson in that robbery.

20             The one final point that I commen to your  
21      consideration is the fingerprint testimony. You  
22      heard Special Agent Smith testify that, sure, there  
23      were fingerprints around the bank, but none of those  
24      fingerprints were identifiable with Robinson.

25             Look at the bank surveillance photographs,



1 ladies and gentlemen of the jury. And as you look  
2 at those photographs think of Welch's testimony.

3 Welch testified that the man who was holding  
4 the gun on him, the Defendant, Robinson, was not  
5 holding his hand flat on the counter. He had his  
6 hand shoved over the counter, and he had the gun  
7 pointed in Welch's belly.

8 Ladies and gentlemen of the jury, you don't  
9 leave fingerprints on the back of your hand. You  
10 don't leave fingerprints if your arm is stuck over  
11 the tellers' counter, with a pistol shoved in a  
12 teller's belly.

13 I submit to you, ladies and gentlemen of the  
14 jury, that after you examine all of the evidence  
15 in this case, there is but one verdict, and one  
16 verdict alone that you can return. And that is  
17 that the Defendant, Willie Robinson, is guilty, as  
18 charged in the indictment in this case.

19 Thank you very much.

20 MR. BOWMAN: May it please the Court, ladies  
21 and gentlemen of the jury. The laws of this  
22 jurisdiction say that the Government opens its  
23 arguments; they can talk first, and then talk to  
24 you last. I can only talk to you once. So, I am  
25 going to ask you please to give me your attention

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1 and your patience, that you have so graciously  
2 given throughout the course of this case.

3 In behalf of the Defendant, William  
4 Robinson, I want to thank you for that patience  
5 and that attention. After I finish my argument, I  
6 am going to ask you one favor; that is to keep  
7 your mind open, and consider, if you would, what  
8 I would have said, when Mr. Pickerstein gets up and  
9 talks again; what arguments I would have put forth  
10 in response to his final closing summation. Because,  
11 I don't have the opportunity to do that.

12 I want to begin by talking to you about  
13 three underlying principles which form the foundation  
14 for our system in America, of criminal justice.  
15 The first is the presumption of innocence. Judge  
16 Clarie probably told you about that in the beginning.  
17 And what the law of presumption of innocence is,  
18 is that when the Defendant walks in the courtroom  
19 and he is accused of a crime, he is presumed innocent.  
20 And the presumption remains with him throughout the  
21 course of the trial, until such time as you find  
22 that the Government has proven beyond a reasonable  
23 doubt that the Defendant has committed the crime  
24 charged.

25 And the second principle is the principle we



1 call reasonable doubt. What is a reasonable doubt?  
2 It is something that people have been trying to  
3 define for years. It is a doubt some people say  
4 that is based on reason. That doesn't tell us much.

5 The law says that a reasonable doubt is that  
6 doubt which would cause a prudent person to hesitate  
7 before acting in a matter of importance to him or  
8 to herself. I don't think I'm patronizing you  
9 when I tell you that you are prudent people. And I  
10 don't think I am telling you anything new when I  
11 tell you how important this case is. Not only to  
12 the Defendant, but for all of us who are involved  
13 in this process. Because it is our process, and it  
14 is our system. It is a unique system, and we all  
15 have a stake in it.

16 The third underlying principle is that of  
17 a unanimous verdict. Before you can render a verdict  
18 all twelve of you must agree. Whether the verdict  
19 be not guilty or the verdict be guilty, you must  
20 agree. And it is your duty to consider the opinions  
21 of your fellow jurors.

22 But, in the last and the final analysis,  
23 it is you as individuals who must make up your minds,  
24 come to your own individual judgment, according to  
25 your own consciences, and render that verdict.

1 Because you will think of this case in the coming  
2 years, in the coming weeks, and in the coming days,  
3 and you will want to know that you did the right  
4 thing.

5 So the question here is whether the Govern-  
6 ment has proven beyond a reasonable doubt that  
7 William Robinson was the man at the counter. Make  
8 no mistake: Our defense of innocence is our  
9 defense that William Robinson is no bank robber.  
10 He never has been; never was. It was in the first  
11 and the second, and this is the third trial, and  
12 it is still our defense.

13 He has testified before you. You have  
14 heard people testify on this witness stand. You  
15 have heard Miss Mondulick; you heard Mr. Welch;  
16 you heard Tate; you heard Mr. Robinson; you heard  
17 Sweeney; you heard Turner; you heard people from  
18 different cultures. And all of you come from your  
19 own experiences in life, your own jobs, your own  
20 education. And maybe Mr. Welch and Miss Mondulick  
21 are more familiar to you, because they are white,  
22 and they are middle class, and maybe there is a  
23 tendency on the part of each of you to identify  
24 more closely with them. But I am going to ask you,  
25 please, please step out of where you have been, to



1 try to judge their testimony as you would with  
2 a black man, or any other person who testified before  
3 you in court. Because when the Judge gives you  
4 the charge on what the law is, he is going to say  
5 to render your verdict without a scintilla of  
6 prejudice. So, I am going to ask you to do that  
7 then, and I know you can do that.

8 You have heard a couple of parts of black  
9 culture testify in this trial. I am going to get  
10 to that later, when I try to tell you about how we  
11 view Tate and Ely Turner, and how we view the  
12 Defendant, William Robinson. Remember one thing,  
13 as I begin, William Robinson has no felony conviction -- none. It is the Government witness, David  
14 Tate, who has four -- not even counting this bank  
15 robbery. And the Judge will tell you that the way  
16 you view these felonies, the way you weigh them,  
17 as to whether you believe somebody or not, and that  
18 if you find a person has been convicted of a felony  
19 -- and in this case four times -- you are entitled  
20 to disregard his testimony. But, that is for you  
21 to decide.

22  
23 So, what were the facts that were presented  
24 in this case? The Defendant, William Robinson, has  
25 taken the witness stand. And he has sworn to you



1           that he did not rob that bank.

2           On February 18th, he got up -- he was a  
3 bookmaker; he is not proud of it, please understand.  
4 Bookmaking is illegal, and he wasn't bragging to  
5 you that he was a bookmaker. Better he should  
6 have been a minister; but he wasn't. He was a  
7 bookmaker, and he told you what his routine was.  
8 And he lived in Beardsley Terrace in Bridgeport,  
9 Connecticut. And he got up that morning, as he got  
10 up every morning in February, 1975, and he went up  
11 to the Hill at about nine o'clock, and he took  
12 numbers there.

13           And he went to a pool room. Yes, he saw  
14 people, and he took their numbers. And that day,  
15 around noontime, he kept an appointment with Joseph  
16 Burroughs. And Joseph Burroughs is not a convicted  
17 felon, either. Joseph Burroughs has sworn to you  
18 what happened that day, and it is for you to  
19 evaluate his testimony.

20           But William Robinson said that he left the  
21 Hill around 12 or so, went over to Ernie's Smoke  
22 Shop on the corner of Stratford Avenue and East  
23 Main Street, and saw Burroughs, and got the keys  
24 to a M.G. from a man named "Eyes". Then Burroughs  
25 left and went to the unemployment. And Burroughs



1 was back from the unemployment office before the  
2 first number came out, around 20 of three.

3 What did William Robinson do on that spot  
4 on Stratford Avenue and East Main Street?

5 He counted up how much he has taken in that  
6 day -- he throws off what he can't handle. The  
7 first number came out at 3:00; the second at  
8 4:00, and the third at 5:00. And there was a  
9 night track that evening.

2 10 The night before Burroughs had told him  
11 "Look, I have to be at the unemployment office the  
12 next day; you better be back there." There is a  
13 time when those numbers have to be in, and that  
14 time is about 1:30 or so. I don't know if any  
15 of you have ever been to the track, but there  
16 comes a time when all bets are in, and the time is  
17 up. And then people see the results, and it comes  
18 back with what the number is.

19 And that is the testimony. And he has  
20 sworn to you that he didn't commit the robbery.  
21 He has sworn to you where he was. And before you  
22 disregard that testimony, I am going to ask you,  
23 has the Government shown you, to make you disbelieve  
24 beyond a reasonable doubt, William Robinson?

25 We heard a lot of testimony about records.



1 Now, Mr. Kegler came here with records today. And  
2 those records were not complete. And Mr. Kegler  
3 wasn't in Bridgeport on February 18, 1975.

4 But the Government is asking you to draw a  
5 negative inference from the absence of a notation in  
6 that record. Now, are you going to rely upon  
7 records, which according to Mr. Kegler were stacked  
8 in a room in Bridgeport because they had so many  
9 people on unemployment, that eventually comes into  
10 some computer, and eventually prints out certain  
11 ledger cards, like the one in evidence? Are you  
12 going to rely on that to disprove the fact that  
13 Joseph Burroughs never went to the unemployment that  
14 day?

15 But, that is what Burroughs told Robinson  
16 that day, and that is how he recalls the day.

17 How reliable are those records? How much  
18 can you state -- how much can you rely upon in a  
19 criminal case, on the records of a bureaucracy  
20 like the unemployment department of the State of  
21 Connecticut?

22 Once again, the weight to be given is a  
23 matter for you, ladies and gentlemen. I am going  
24 to ask you to scrutinize those records. The  
25 February 10th notation that Mr. Pickerstein talks



1 about is missing, the supporting the documents.  
2 They couldn't find the check, and they couldn't find  
3 the claim voucher that Burroughs signed.

4 And if they couldn't find that, how can you  
5 be so certain that Burroughs wasn't there on  
6 February 18th? He was entitled to receive benefits  
7 -- the benefits had been extended. How can anybody  
8 be so sure?

9 Kegler wasn't there; Burroughs says he was.  
10 And Burroughs says that when he got back to the  
11 smoke shop on that day Robinson was still there.

12 I know you heard the testimony; I know you  
13 heard testimony that William Robinson was engaged  
14 in something that was illegal that day. He was a  
15 gambler, but that is a far cry from what the Govern-  
16 ment claims he was.

17 That night he left the smoke shop and went  
18 home. He went to Beardsley Terrace, and he got up  
19 the next morning, and it was the same routine. And  
20 he took numbers on the Hill. And he left around  
21 noontime for Stratford Avenue, and he got there.  
22 And at about 1:30 he called Greensburg, Carolina  
23 Freight, where he worked. And the records here  
24 support that. He says he called there, and Carolina  
25 Freight, Mr. Zello, says that Mr. Robinson took a

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20  
1 trip out on the 20th.

2 Well, according to the Defendant, he called  
3 there before he left. He drove to Greensburg, got  
4 there, and had just come from a long drive,  
5 showered, and took a trip out the following morning.  
6 And I think it was early in the morning, and it  
7 had to be one or two o'clock that morning. And  
8 that is all supported by the record.

9 He is down there; he's down in Pennsylvania.  
10 He is driving trucks. He drives to Dayton; drives  
11 to Cincinnati, and on the 25th he hears from his  
12 wife, or shortly thereafter. And what does he say  
13 to her? She says "Somebody was here; they have  
14 broken down the door, and they are looking for you  
15 for a bank robbery."

16 So what does this guilty man do? This guilty  
17 man, instead of running -- and, you know, if he  
18 were a bank robber, he had made clean his getaway;  
19 he was in Pennsylvania, he was gone -- this guilty  
20 man gets in his car, and he drives back to Bridge-  
21 port.

22 What do you do that for? Mr. Pickerstein  
23 calls that beating the rap. If you are a bank  
24 robber, that is going to be pretty stupid.

25 So, he drives back to Bridgeport, and he



1 goes to the police station. And he goes up to the  
2 police officer in Bridgeport and he says "Are you  
3 looking for me?" And the guy says "We're not  
4 looking for you."

5 He said "Well, somebody broke down my door.  
6 You better check and see if the State Police or  
7 somebody is looking for me."

8 They check with the State Police, and no-  
9 body is looking for him. So the police officer  
10 calls the FBI, and the FBI says "Yes, we're looking  
11 for him. Stay there." He doesn't run; he stays.  
12 Agent Smith comes over and he says "Arrest him."

13 And this happens on the 28th. He photo-  
14 graphed him; he took what they call major case  
15 prints, the fingerprints on all the fingers, the  
16 palm prints along the sides, the most extensive  
17 printing that the FBI does. That was Agent Smith's  
18 testimony: Any place you could take a print, they  
19 took it.

20 There were palm impressions and fingerprints  
21 left in the bank. Agent Smith said the total  
22 number of prints they found after that robbery,  
23 including the prints that were found by the  
24 Connecticut State Police, were 15. There were  
25 seven -- I think the testimony was seven taken from

1 Welch's nameplate. Did they find any print of the  
2 Defendant, Robinson? They found two of Tate's, but  
3 none of the Defendant Robinson.

4 What does that tell you about whether or  
5 not Robinson was the bank robber? The Government  
6 says "Well, he didn't leave any prints." Examine  
7 the photographs, ladies and gentlemen. Satisfy  
8 yourselves -- we have a new trial and we have the  
9 bank film, and now the Government says these  
10 pictures aren't good pictures. Because the Govern-  
11 ment is not pleased with the likeness between the  
12 robber in the photograph and William Robinson.

13 But you take a close look. You observed  
14 the film. Is that William Robinson? How many  
15 pictures were shown to the tellers that they  
16 selected, other than the Defendant Robinson? I am  
17 going to get into Welch's testimony on the photo-  
18 graphic spread, and Mondulick's testimony in a  
19 moment. But, look at that picture. Decide for  
20 yourself. Did that robber leave fingerprints? If  
21 the robber left fingerprints, why weren't they  
22 William Robinson's fingerprints?

23 And are you satisfied beyond a reasonable  
24 doubt from that picture that the robber across the  
25 counter was William Robinson?



1           On the day of the arrest, Clarence Smith of  
2 the FBI says to Robinson -- he has apprehended him --  
3 he said 'Where were you?' Robinson told him. He  
4 said he was on the Hill in the morning. And I  
5 think Agent Smith said that in the area of Stratford  
6 Avenue and East Main Street, those two streets  
7 intersect. Did Agent Smith go to check it? No.  
8 Did Agent Smith send one of his men to check? No.

9           They went to the bank; they looked for  
10 fingerprints. They have done all sorts of investi-  
11 gation, including the search of Luther Flemming's  
12 car, on February 25th, in which there was a black  
13 coat found. And we are going to hear about that  
14 in a moment. And did they seize that coat? No,  
15 they didn't. But William Robinson said where he  
16 was, and the FBI doesn't follow it up.

17           Clarence Smith was not an investigator on  
18 that date, he was judge and jury. He was judge and  
19 jury. And if the Government asked the question  
20 "Where are all the people who were present on  
21 February 18th, 1975, on Stratford Avenue and East  
22 Main Street?" they could have found out on  
23 February 28th, 1975. They could have had the  
24 witnesses that would have proved their point. But  
25 they chose not to. They didn't want to investigate

1 William Robinson.

2 Picture it, somebody you know is arrested  
3 for a crime, and the police officers come up to  
4 them, 'Where were you on such and such a day at  
5 such and such a time?' And you tell them. "Well,  
6 I'm not going to check that out."

7 What does that tell you about the obligation  
8 of an FBI agent or a policeman?

9 Where would he be in this case had he  
10 checked it out? Do you have a doubt about the  
11 bona fides of that agent that day, when he is  
12 questioning a man who is charged with a serious  
13 crime, and he doesn't even go out to see if the man  
14 is telling the truth?

15 Some two years later, three trials later,  
16 here we are. And we are sitting in a room, and you  
17 are asked to judge the testimony of witnesses. And,  
18 if I could use the analogy -- and it is crude, but  
19 you are seeing the play when the rehearsals have  
20 taken place before you have come here.

21 Finally, the Defendant has sworn to you that  
22 he did not do it. It is a matter for your judgment.  
23 And I know you will consider the testimony carefully.

24 I want to get to David Tate in a moment.  
25 First I want to talk to you a little bit about



1 witness identification testimony. There has been  
2 much written on it in legal journals. It is the  
3 leading cause in America of wrongful conviction.

4 Why? Because it is powerful. Because when  
5 a jury sits in a court of law and they see a witness  
6 on the witness stand say "That's the man" it has  
7 an impact. But it is a cause of wrongful conviction,  
8 because many times it is unreliable.

9 So, let's take a look at Retta Mondulick and  
10 Robert Welch, and their testimony. How do you  
11 evaluate their testimony? Neither were ever asked  
12 to go in a lineup, to choose a man from among a  
13 group of men who may or may not have been the  
14 robber. From February 28th until June 5th, 1975,  
15 the Defendant was available to the police, to the  
16 FBI, to have put him in a lineup. They chose not  
17 to.

18 The robbery took 82 or 84 seconds -- that  
19 is by counting the frames on the film. Retta  
20 Mondulick testified that she touched the alarm off  
21 at the beginning of the robbery, and you can see  
22 from the film that from the start -- that is the  
23 first frame, I believe, it is my recollection --  
24 but it is your own that counts -- that there was  
25 nobody in the bank. And the next frame shows the

1 robbers come into the bank. 84 seconds.

2 Is that time to make a measured and accurate  
3 and careful judgment?

4 I am not saying you should never believe eye  
5 witness identification testimony, but I am saying  
6 that you must scrutinize it with care. They see  
7 the Defendant sitting in a courtroom, alone, alone  
8 as he is today. And at his hearing on June 5th,  
9 and the first trial on June 10th, and throughout  
10 that trial, and the second trial in January, '76,  
11 and throughout this trial.

12 The real identification took place outside  
13 the courthouse -- or, I should say, the courtroom,  
14 on June 5th. Mr. Pickerstein alluded to that in  
15 his argument.

16 Retta Mondulick was sitting, and she was  
17 talking near a window. And with her was Welch, and  
18 there was Peter Dorsey. Dorsey had his back to the  
19 corridor. Retta Mondulick's testimony was that she  
20 was able to identify Mr. Robinson, who was there  
21 that day, from what she called 30 or 35 feet away,  
22 when he was getting off the elevator. She said it  
23 was 30 to 35 feet. Mr. Dorsey said it was 65 to 70  
24 feet. And she knew immediately -- 84 seconds the  
25 robbery took -- from 65 to 70 feet, immediately she

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1 knows.

2 And what was her state of mind that day? She  
3 said she was paranoid. I don't blame her. I think  
4 we all feel sympathy for her. It is an ordeal fo  
5 her. It is an ordeal for the Defendant; it is an  
6 ordeal for everyone. I'm sorry she was a victim of  
7 a robbery, but sympathy is not something that we can  
8 allow to interfere with our judgment on whether or  
9 not she had an adequate opportunity to make an  
10 identification four months later.

11 Robert Welch, he is sitting next to her,  
12 and he hears it, and he looks up. And when he looks  
13 up his view is blocked by Peter Dorsey. And his  
14 testimony was that he had a glimpse, a very brief  
15 glimpse of Mr. Robinson. And it was from the side.  
16 And yet he was sure, he was sure at that time.  
17 Robert Welch is a man whose testimony you will have  
18 to carefully weigh.

19 Both of them said that when the man at the  
20 counter came into the bank, they began writing out  
21 directions. And that they were interrupted from  
22 writing out directions when the man vaulted the  
23 counter. And, according to Tate, that was Tate,  
24 vaulting the counter, who hollers "This is a stickup."  
25 And their attention is down here. And they are



1 watching this man come up behind the teller counter.  
2 And the man is going through the drawers. And then  
3 the third man comes in, and the third man,  
4 according to Tate, is Luther Flemming. And Tate  
5 has never testified against Luther Flemming.

6 Luther Flemming comes in, according to  
7 Retta Mondulick, and cocks the gun, and it is at  
8 this time that she is panic stricken. Who could  
9 blame her? And she is asked on cross examination  
10 during this trial, and during the second trial,  
11 "Is it fair to say that your attention was primarily  
12 upon the man who was behind the counter, and the  
13 man with the shotgun?" And she said yes.

14 84 seconds. Is that time to make a measured  
15 judgment?

16 Her description, five-eleven to six feet.  
17 Mr. Robinson is over six-two. She said the man had  
18 a mustache, had sideburns -- a description that  
19 could fit anyone, white or black. She says the coat  
20 was black, not brown. Not brown, but black. She  
21 told this to the grand jury. She told this to the  
22 Shelton police.

23 And, above all, she has been mistaken before.  
24 She said several times -- we don't know how many  
25 times -- she has been mistaken in her identification.

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1 But, she has been mistaken before.

2 When she is shown the photos on March 6th,  
3 two days after Welch, she signed the picture, and  
4 her testimony was that she saw Robinson's name on  
5 the back of the photo, and also saw Welch's name  
6 on the back of the photo. And before she picked  
7 Robinson's photo, she picked another photo. She  
8 was struck by other photos.

9 And she comes to court on June 5th, 1975,  
10 and she knows what case she is coming for, and  
11 from 75 feet she can identify him.

12 That day at the hearing, she testified that  
13 there were no other blacks in the hallway. Five  
14 days later, she testifies that there was one black  
15 in the hallway, and he was a five foot, black  
16 prosecutor. And before you now there are more than  
17 one black in the hallway; there are several now.

18 Why did she feel the need to bolster her  
19 testimony? If she is so inaccurate about it when  
20 she is in the hallway, and not under stress, as in  
21 the robbery, how do you evaluate her testimony as  
22 to what she saw and what she felt at the time the  
23 robbery occurred?

24 Please don't misunderstand me. I'm not  
25 calling her a liar. But I submit to you that she



1 is mistaken -- tragically mistaken.

2 Robert Welch, two days before, picked  
3 another man resembling the robber. 15-C. This is  
4 the first picture he selected. That's not the  
5 Defendant; that's not William Robinson. Elack,  
6 from the size of his head he looks big, but he is  
7 not the Defendant.

8 What does Agent Smith say to him? "Just  
9 continue through; I want you to keep going." Look,  
10 Welch is a fellow who was upset; he's been robbed,  
11 and he would like to see the person who robbed him  
12 apprehended. So he goes through and he picks,  
13 ultimately, a picture of the Defendant. Is he  
14 positive? No.

15 So Robert Welch, on March 4th, picks this.  
16 He signs the back of the photo. And two days later  
17 Retta Mondulick sees his name on the back, re-  
18 inforcing her impression. Robert Welch is a man  
19 who described the robber's coat as black, not brown  
20 -- black. The man who said that the transcript is  
21 wrong in several places. Not just once, but when  
22 he reviewed it before he testified, he found a lot  
23 of errors in the transcript.

24 This is a man who was in a state of shock  
25 during the robbery. The man who picked the photo



1 because of the hair and the eyes -- when the robber  
2 wore a cap.

3 Look at the photos to see where that cap  
4 was, how far over the robber's hair it came. The  
5 man who gave Inspector Dressel, who is now dead --  
6 and you heard his report -- a description of the  
7 robber as five-ten, and he wore a black coat.

3 8 The Defendant is bigger, much bigger. And  
9 during a robbery a perpetrator of a robbery looks  
10 gigantic, not small -- but much, much bigger.

11 Once again, Robert Welch is a man who has  
12 been mistaken before. And haven't we all? How  
13 many times have you said to yourselves "Gee, I  
14 know I could have sworn I saw somebody who I know?"  
15 They have never seen the robber before -- never  
16 saw anybody before. And I could swear I saw some-  
17 body at a certain place, and it turns out that you  
18 were wrong. They have been mistaken before. They  
19 had admitted that to you. Both black and white  
20 people. they have been mistaken about.

21 Robert Welch is the man who had his plate  
22 knocked off the counter -- seven fingerprints.  
23 None of them Willie Robinson's.

24 So when you evaluate both their testimony,  
25 please consider the opportunity they had to observe.



1 And then to make an identification four months  
2 later, with this Defendant getting off an elevator.

3 How many blacks were around? A person who  
4 is the victim after a robbery is under tremendous  
5 stress. And this robbery took a minute and a half,  
6 maybe two minutes.

7 And Mr. Pickerstein has told you that David  
8 Tate's testimony must be viewed with caution. Why?  
9 ~~Because~~ he had a reason to hurt Willie Robinson.  
10 Because the FBI agents went to him in the jail, and  
11 he said that Robinson had looked at the bank  
12 surveillance photographs and said that one of the  
13 robbers was Tate. Tate wanted out of that jail --  
14 and who can blame him? And he said to the FBI  
15 "Look, I want out." And they said "We're not  
16 going to do anything for you until you cooperate  
17 with us."

18 And so no bond was lowered, and David Tate  
19 remained in jail. And in May of '75 he pleads  
20 guilty. And in June, the first trial, he doesn't  
21 testify against Robinson. He doesn't come into  
22 court and swear under oath that Robinson was the  
23 bank robber on February 18th.

24 Subsequently he is brought into court in  
25 September, and he's sentenced. He is allowed to



1 plead to a lesser charge. Back in May he could have  
2 been exposed to 25; now he's exposed to 10. And  
3 Judge Zampano in New Haven gives him the full load,  
4 he gives him 10.

5 David Tate, for four felonies, breaking and  
6 entering, resisting arrest, robbery in the third  
7 degree -- for all those felonies he only got 90  
8 days in his whole life. And now he is facing ten  
9 years..

10 Nine days later, they bring him before the  
11 grand jury. And before the grand jury, he refuses  
12 to testify, and they give him a sentence of 13  
13 months. So now he is facing eleven years in prison.  
14 And he's not happy. And he testified that he was  
15 shocked, shocked at what the trial judge gave him  
16 in September. And he believed at that time that it  
17 was because he had not cooperated with the Federal  
18 Government.

19 David Tate also supported himself by selling  
20 drugs. He admitted that on the witness stand. And  
21 he came into his own when he told you how he would  
22 be able to sustain himself on the 60 to \$100 a day  
23 habit. He was at home telling you how he did this.  
24 Remember him gesturing and gesticulating about how  
25 he was able to accomplish this feat?



1           In November, the FBI goes to see him in  
2 Florida, where he is incarcerated. And he tells  
3 them he's not cooperating unless he gets a release  
4 from prison, or parole. And they said no.

5           And in December, he files a motion for re-  
6 duction of sentence, and the FBI goes down to see  
7 him after that, and they say "Will you testify?"  
8 He said "Only if I'm released."

9           David Tate, hardly naive; David Tate, a  
10 shrewd bargainer. The man who said he was  
11 tricked; the man who said he used a cigarette  
12 lighter. Do you believe that was a cigarette  
13 lighter in the bank? Welch said the click he heard  
14 came from the man who vaulted the counter.

15           No matter whose testimony you believe,  
16 Mondulick or Welch, with respect to that man who  
17 vaulted the counter, do you believe it was a  
18 cigarette lighter? And what does that tell you  
19 about David Tate?

20           So, in December again, he says I'm not  
21 testifying; I'm not testifying unless I get re-  
22 leased." So in January he is brought to Whalley  
23 Avenue, to New Haven, and this is January, '76,  
24 before the second trial. And before he agreed to  
25 cooperate, he said "What is the status of my motion?"



1           And they tell him the judge hasn't acted on  
2           it; it hasn't been granted, it hasn't been denied.  
3           David Tate declines to testify.

4           Now in July this year, according to Tate,  
5           he is going before the Parole Board, and the  
6           Government is writing letters for him. His sentence  
7           has been reduced to six years, and this is for a  
8           bank robbery that he went in with arms, for a man  
9           who committed four felonies prior to the bank  
10          robbery. He stands a chance of being released in  
11          July, 1977, less than two years after he was  
12          originally incarcerated.

13          Can you accept this man's word? I'll ask  
14          you the question Mr. Pickerstein asked about  
15          Sweeney: Is this the man whose word you would  
16          rely upon in making a decision in a matter of  
17          importance in your own lives? A drug addict, not  
18          just a victim, a man who sold drugs. A man who  
19          was out on the street to sustain himself, who had  
20          robbed and stolen and cheated, who lied and deceived  
21          his father, and his probation officer.

22          And the question before you is whether he  
23          lied to you. He had specific motivation to lie  
24          against Robinson. Robinson had been shown a bank  
25          surveillance photograph, according to what Smith

1 told Tate. And he said that Robinson said that is  
2 Tate.

3 He was told that they had two fingerprints  
4 of Tate. And I imagine Tate was feeling pretty  
5 angry. And now he finds himself in an extremely  
6 anxious position.

7 What is the conversation between Tate and  
8 Hilton Paine? Sure, Sweeney is a convicted felon;  
9 sure, he spent most of his time in prison. But if  
10 the Government says to you, as Mr. Pickerstein said  
11 to you in his opening argument, how can you take  
12 the word of Arthur Sweeney, he's a convicted felon?  
13 If you don't believe Sweeney, how can you believe  
14 Tate? What makes Tate any different than Sweeney?  
15 I don't contest that he was a bank robber; I don't  
16 contest he is going to know details that jibe with  
17 Retta Mondulick, whether a latch was broken or a  
18 latch wasn't broken -- he was there.

19 Does the Sweeney testimony trouble you? I  
20 say, does it? Does it give you pause? Can you  
21 reject Arthur Sweeney's testimony, in jail with  
22 this man? And if you reject him because he has  
23 spent most of his life in prison, how do you treat  
24 the testimony of David Tate?

25 George Maher testified in this trial. He is



1 a Corrections Officer at the Bridgeport Jail. And  
2 he testified that two of the officers at the jail  
3 had the opinion that the man in the photograph was  
4 Eli Turner. And you know that Eli Turner, from  
5 Sergeant Gabrys, was committing robbery in February  
6 of 1975. He robbed the Cumberland Farms Store,  
7 and he robbed the variety store.

8 Then you heard from Eli Turner. Eli Turner  
9 has been convicted before, and has served a term  
10 in Somers, and been in Somers since May of '75.  
11 So what does Turner testify to? He is asked by  
12 Willie Robinson's lawyer, "Where were you on  
13 February 18th, 1975?" And Turner says "I was  
14 hiding from the police. I was in my apartment at  
15 Father Panik Village."

16 "Who was with you?"

17 "My wife."

18 "Where is she?"

19 "I don't know."

20 I imagine it was uncomfortable for Mr.  
21 Turner. I imagine it was uncomfortable for him to  
22 turn and allow you to view him in this courtroom.  
23 And then we had a moment in this trial, we had a  
24 moment when the prosecutor rose, and he took a  
25 bank surveillance photograph, knowing that Mr.

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1 Robinson's lawyer was questioning Eli Turner on  
2 where he had been on the date of the robbery, a  
3 man who had several felony convictions, a man who  
4 committed robbery before, and he says "All right,  
5 Mr. Turner, I am going to show you a bank  
6 surveillance photograph."

7 There were objections; there were side  
8 bar conferences. You remember?

9 He goes over and he lays out a bunch of  
10 photographs. "Now, Mr. Turner, are you able to  
11 say who the man in the photograph is?"

12 He had all the motive in the world -- he  
13 had all the motive in the world to bury Robinson.  
14 After all, look at what his lawyer had done.  
15 And he looks, and he looks and he knows the Defendant,  
16 and then he said "Yes, it looks like a dope fiend  
17 I seen around Bridgeport two or three times." I  
18 thought Mr. Pickerstein was going to fall out of  
19 his chair -- as I recall, he was sitting.

20 And what did that tell you about whether  
21 that man in the photograph is the Defendant or is  
22 not the Defendant?

23 As I said before, our defense is that he  
24 is not the man in the photograph. He has sworn to  
25 you that he did not commit this bank robbery.

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1           Why did the FBI in December of 1976 go up  
2 to Somers Prison to ask Eli Turner what they should  
3 have asked him in the spring of '75, when he was  
4 apprehended: "Where were you on February 18,  
5 1975?"

6           What are they doing interviewing a man,  
7 when it is supposed to be William Robinson, that  
8 they tried two times before? If they are not  
9 convinced, how convinced can you be?

10          This is the third trial -- and I am coming  
11 to a close, and I want to thank you for your  
12 attention.

13          Each of you must decide beyond a reasonable  
14 doubt, or if you have a reasonable doubt. You  
15 must consider the opinions and the views of each  
16 other. But in the end, it is each and every one  
17 of you who must come to a decision according to  
18 his or her own conscience.

19          I ask you to find William Robinson not  
20 guilty, because he did not do this, because he did  
21 not commit this bank robbery.

22          He is big, and he is a black man, but he  
23 has sworn to you that he did not do this. And I  
24 ask you to find him not guilty.

25          Thank you.

1       W I L L I A M                               J.                       K E G L E R,

2       appearing as a witness, being duly sworn, testified as

3       follows:

4               THE CLERK:   Would you state your full name?

5               THE WITNESS:   William J. Kegler.

6               THE CLERK:   Your address, Mr. Kegler?

7               THE WITNESS:   RFD 4, Willimantic.

8       DIRECT EXAMINATION BY MR. PICKERSTEIN:

9               Q       Good morning, Mr. Kegler.

10              A       Good morning.

11              Q       Are you employed, sir?

12              A       Yes, I am.

13              Q       By whom are you employed?

14              A       The Labor Department, State of Connecticut.

15              Q       And what is your position with the Labor  
16       Department, sir?

17              A       Appeals Referee.

18              Q       When did you become an Appeals Referee?

19              A       January 24th, last.

20              Q       Of 1977?

21              A       Yes.

22              Q       And prior to becoming an Appeals Referee, what was  
23       your position?

24              A       I was an Employment Security Division Manager, II.

25              Q       Can you describe what the duties of a Manager II is

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1 in the division?

2 A It would depend on your work situation. You are  
3 referring to my position?

4 Q Yes, sir, to your particular situation.

5 A I managed the claims examination department of the  
6 central office, in Wethersfield.

7 Q Now, can you tell us what your educational  
8 background is, sir?

9 A High school, a couple of college credits.

10 Q How long have you been working for the State Labor  
11 Department?

12 A 16 years.

13 Q And has that all been in Unemployment Securities?

14 A Yes, it has.

15 Q Are you familiar with the records that are kept  
16 by the Unemployment Security Division?

17 A Yes, I am.

18 Q And at my request did you bring certain records  
19 with you here today?

20 A Yes, I did.

21 Q May I have them?

22 MR. PICKERSTEIN: Could we mark this as one  
23 package?

24 THE COURT: The identification number, or  
25 numbers, Madame Clerk?

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1 THE CLERK: Government's Exhibit 22, your  
2 Honor.

3 THE COURT: How many items comprise 22?

4 THE CLERK: 15, your Honor.

5 THE COURT: That will be 22-A through that  
6 particular letter -- whatever that letter may be.

7 BY MR. PICKERSTEIN:

8 Q While the Clerk is marking these exhibits for  
9 identification, Mr. Kegler, can you tell us at my request  
10 did you conduct a search of the unemployment security records  
11 of the State of Connecticut for one Joseph Burroughs?

12 A Yes, I did, Counselor.

13 Q Can you tell us how you conducted that search, sir?

14 A Well, by simply obtaining an individual social  
15 security number, pulling the account ledger, and from that  
16 picking the various documents that were required.

17 Q In conducting that search did you go through all  
18 of the records of the Unemployment Security Division of the  
19 State Labor Department as they pertained to Mr. Joseph  
20 Burroughs for the period January and February 1975?

21 MR. BOWMAN: If he knows.

22 BY MR. PICKERSTEIN:

23 Q If you know?

24 A Yes, I do know, and that is what I did.

25 Q Can you tell us what procedures, sir, an individual



1 follows when he goes to a particular unemployment office in  
2 order to claim his unemployment compensation?

3 A The initiating claim is obtained from the  
4 individual, after separation from employment, at an office  
5 in this person's area.

6 Q And once his claim has been processed does he  
7 appear at the Unemployment Compensation Office at periodic  
8 intervals thereafter?

9 A That's correct.

10 Q How frequently does he appear?

11 A The last few years it has been on a biweekly  
12 filing arrangement.

13 Q Do you recall how frequently an individual would  
14 appear during 1975?

15 A Biweekly.

16 Q So his unemployment compensation check covers a  
17 two week period?

18 A Correct.

19 Q For how many weeks is an individual able to obtain  
20 unemployment compensation?

21 A We are talking now during 1975?

22 Q Yes, sir.

23 A All right. An individual with sufficient credits  
24 would file -- originally a 26 week duration. Then there are  
25 extended programs, provided by a combination of State and

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1 Federal. And if he had that it would extend it beyond that  
2 26 weeks.

3 Q Now, Mr. Kegler, I show you what have been marked  
4 as Government's Exhibits Numbers 22-A through 22-P for  
5 identification, and I will ask if these are the records that  
6 are kept in the ordinary course of the business of the State  
7 Labor Department?

8 A Yes, they are, Counselor.

9 Q And is it the ordinary course of business of the  
10 State Labor Department to keep such records?

11 A Yes, it is.

12 Q And are these records under your care, custody  
13 and control?

14 A Yes, they are.

15 Q I will ask you to look through these, 22-A through  
16 22-P, and tell us whether there are any records there which  
17 would enable you to determine whether or not one Joseph  
18 Burroughs was paid unemployment compensation on February 18,  
19 1975?

20 A February 18th?

21 MR. BOWMAN: Your Honor, I object. The records  
22 speak for themselves. They are not in evidence yet.  
23 They are not offered.

24 MR. PICKERSTEIN: That's correct, your Honor,  
25 I just ask if there are such records there.



1 THE COURT: The question is allowable. He  
2 has asked him to pick it out. He is the expert.  
3 Is there such a record there? I don't know.

4 MR. BOWMAN: I think it is a matter of dispute  
5 whether this man is an expert, your Honor.

6 THE COURT: Well, he has custody of the  
7 records and has been employed there 16 years in  
8 this department. He has the record here with him.  
9 Is there one for the 18th of February?

10 The question is allowed.

11 THE WITNESS: I have the records, Counselor.

12 BY MR. PICKERSTEIN:

13 Q You are specifically referring to Government's  
14 Exhibit 22-K for identification?

15 A 22-K and 22-H.

16 MR. PICKERSTEIN: I offer Government's  
17 Exhibits 22-K and 22-H, your Honor.

18 MR. BOWMAN: May I inquire, your Honor?

19 BY MR. BOWMAN:

20 Q Mr. Kegler, during February 1975 were you employed  
21 by the unemployment people in the State of Connecticut?

22 A Yes, I was, Counselor.

23 Q Where was your office?

24 A In Wethersfield.

25 Q So you have no first-hand knowledge of what may have

1 happened on February 18, 1975 in Bridgeport? You weren't  
2 there?

3 A Correct.

4 Q Do you know who was there?

5 A You mean to recite the individuals by name?

6 Q Yes.

7 A Well, I know the manager of the office at that  
8 time. I'm not familiar with the individual staff that are  
9 or were there.

10 Q But you weren't there; isn't that true?

11 A That's correct.

12 Q You were in Wethersfield, Connecticut?

13 A Correct.

14 Q Now, Mr. Pickerstein asked you if you made a  
15 search. Now, what does that mean, sir, a search of records?  
16 What exactly did you do?

17 A Okay. Well, with the help of another staff member,  
18 just one of my staff to expedite this thing, I went down to  
19 our department, pulled the ledger, a copy of which you have,  
20 one of those exhibits. And from there I determined the dates  
21 of payments. They go on microfilm, and I pulled out the  
22 appropriate film and made copies of the records that were  
23 there, sir.

24 Q What is the name of that assistant?

25 A Alise Romano.

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1 Q Is it true you were asked, or you were interviewed  
2 prior to the second trial by Mr. Porter, back in January  
3 1976?

4 Speak up so that the Court Reporter can get it down.

5 A I will say yes.

6 Q Isn't it true that at that time that you told  
7 Mr. Porter that the records maintained in your central files  
8 were confused, and there doesn't seem to be anything  
9 definite?

10 A I don't know. Of course this is a long --

11 Q Did you tell him that?

12 A Not exactly.

13 MR. PICKERSTEIN: Let the witness answer the  
14 question, your Honor.

15 THE WITNESS: Not exactly.

16 THE COURT: What did you tell him?

17 THE WITNESS: I perhaps -- now I can't --

18 THE COURT: What is your best recollection?

19 THE WITNESS: My best recollection is that  
20 since this was at the highth of our recession in  
21 Connecticut, our Department was somewhat confused  
22 in record keeping, beyond payments made to  
23 individuals. In other words, we were paying, let's  
24 say, thousands of checks per day, over and above  
25 what our equipment and staff would allow, and

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1 complete processing.

2 Consequently, well, I suppose figuratively  
3 speaking, tons of these records on which payments  
4 had been made were literally piled in rooms,  
5 awaiting further processing.

6 In that respect the records were not  
7 available. I don't know if you call that a  
8 confused situation. I guess in some ways it would  
9 be.

10 THE COURT: Were they subsequently compiled?

11 THE WITNESS: Yes, your Honor, they were.

12 THE COURT: All right.

13 BY MR. BOWMAN:

14 Q Well, did anybody go to those rooms and physically  
15 search to see whether Joseph Burroughs was at the unemployment  
16 office and received a check --

17 MR. PICKERSTEIN: Objection.

18 BY MR. BOWMAN:

19 Q -- on February 18, 1975?

20 MR. PICKERSTEIN: Objection, your Honor. I --

21 MR. BOWMAN: Your Honor, I claim it.

22 MR. PICKERSTEIN: -- don't know --

23 THE COURT: Wait, one at a time.

24 MR. BOWMAN: I'm sorry. I apologize.

25 MR. PICKERSTEIN: I don't know whether



1 Mr. Bowman is talking about the time before the  
2 second trial or the time before this trial.

3 It should be made clear, because the witness  
4 responded to the Court that since then that they  
5 were piled haphazardly, and they have been filed,  
6 as I understand it, now in orderly fashion.

7 So that can be ascertained. Did his  
8 procurement of these files today come from the  
9 orderly files of the Department, or from a pile  
10 of confused paper? Nobody asked him that.

11 BY MR. BOWMAN:

12 Q Do you recall my question?

13 (Previous question read back.)

14 Q Did anybody do that in January '76?

15 A I can't be specific. I presume --

16 Q Do you have personal knowledge?

17 THE COURT: Let him finish his answer,  
18 Counselor.

19 THE WITNESS: I presume that was done. Since  
20 it is --

21 MR. BOWMAN: I object to anything further.  
22 He said he presumes it was done. I am asking  
23 does he have personal knowledge whether it was  
24 done.

25 THE COURT: A simple question -- not what you

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1           presume. Do you have any personal knowledge?  
2           Do you know the answer? Yes or no? If you don't  
3           know, say so.

4           THE WITNESS: I'm not sure at this point.

5 BY MR. BOWMAN:

6           Q     Now, your testimony is that in February 1975 you  
7           had a high rate of unemployment in this country? -

8           MR. PICKERSTEIN: Objection. That is not --

9           THE WITNESS: In this state.

10          MR. PICKERSTEIN: That is not the man's  
11          testimony.

12          MR. BOWMAN: In the state.

13          MR. PICKERSTEIN: He testified at the time the  
14          search was conducted in 1976, before the second  
15          trial.

16          MR. BOWMAN: That is not my recollection. If  
17          that is his testimony I will withdraw the question.

18          THE COURT: It is very clear.

19 BY MR. BOWMAN:

20          Q     You said -- when was it that there were stacks and  
21          stacks of paper with respect to checks that had been paid?  
22          What month?

23          A     That was back in '75.

24          Q     When in '75?

25          A     Most of the calendar year.

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1 Q And could you describe for the jury what those  
2 rooms looked like with those stacks of papers, records of  
3 payments that had been made?

4 A They were, in most cases, overly large closets --  
5 scattered in different areas of the building, with claims  
6 and check vouchers piled and stacked in -- well, corrugated  
7 boxes. Perhaps whatever the length of a check is. Maybe  
8 14, 18 inches long.

9 And they were just stacked up as high as a person  
10 could reach. Some of these rooms had shelving, and they  
11 were stacked on shelves, and on the floor when there weren't  
12 shelf facilities.

13 And in one area down in our keypunch area, since  
14 most of this had to go through that unit, there was a small  
15 closet there in the corner of the room that was just devoted  
16 to these stacks of documents, awaiting processing by our  
17 computer system -- sorting and processing.

18 Q I take it that at some time during 1975 you had  
19 seen those rooms in that condition?

20 A Perhaps on a three or four times a week basis.

21 Q Now at that time, prior to the second trial in this  
22 case in January, you had tried to make a search of the  
23 records, and you had also had an assistant go down to  
24 Bridgeport to make a search of the records; isn't that true?

25 A We didn't go to Bridgeport.

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1 Q You didn't go to Bridgeport?

2 A Counselor, you are talking January 1977?

3 Q No, '76. I will get to '77.

4 '76. That is true, that you had an assistant go  
5 down?

6 A No, no one went to Bridgeport.

7 Q What records were searched, Mr. Kegler?

8 A The records in-house, the records in Wethersfield.

9 Q And what do those records look like?

10 A They look like the original of these facsimilies,  
11 these photostats I have here.

12 Q Are they computer print-outs?

13 A No, they are not.

14 Q Are they vouchers?

15 A The only computer print-out is the ledger. You  
16 have that.

17 Q Now I take it that there was a second search made  
18 before this trial?

19 A That's correct.

20 THE COURT: Nobody ascertained when that was  
21 done.

22 BY MR. BOWMAN:

23 Q When was that done?

24 THE COURT: And by whom?

25 THE WITNESS: To the best of my recollection it

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1 was done during the month of December '76.

2 BY MR. BOWMAN:

3 Q And by whom?

4 A By myself, as I have just indicated, and one of  
5 my staff, who assisted me, Alise Romano.

6 Q Now, did you divide the responsibilities between  
7 who searched what records?

8 A We went at this together. I pulled the ledgers  
9 myself, which is the first step, and the easy portion of  
10 this. The rest of it was conducted up in the film library,  
11 in our film room.

12 THE COURT: Suppose we ascertain what a ledger  
13 is. We know it in bookkeeping parlance, what a  
14 ledger is. You tell us what your ledger is.

15 THE WITNESS: In effect it is the same type of  
16 thing, your Honor. It is a document worked on  
17 by the computer, as each payment is made to an  
18 individual, and it is posted. And a running  
19 balance of his account is kept.

20 THE COURT: And what normally is put in this  
21 posting, in the ledger? What information is in the  
22 ledger?

23 THE WITNESS: Well, we have the last four  
24 digits of the individual's social security number,  
25 the date of payment, the week ending date for which

6/A

1           this payment was made, and the declining balance  
2           in the account.

3           THE COURT: Is there a date in there, in that  
4           ledger, as to when the particular person to whom  
5           the payment was made picked it up or signed in for  
6           it, so to speak? Is that on that ledger? I  
7           don't know; I have never seen one.

8           THE WITNESS: Yes, the date of payment is on  
9           the ledger.

10          THE COURT: Is the date of payment on the  
11          check, or is the date of payment that the check  
12          was delivered?

13          THE WITNESS: It would be one and the same.  
14          At that time it would be one and the same: the  
15          check is dated for the date that the individual  
16          received it.

17          THE COURT: How would you know he received it  
18          on that particular date?

19          THE WITNESS: Then we would have to trace  
20          back through other documents, from this ledger,  
21          which is our prime source of information. Under  
22          the system that is in operation in our department,  
23          we would go from the ledger to that date, and  
24          pull the certification, the continued claim form  
25          that the individual had signed.

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1 THE COURT: All right. I will let counsel  
2 develop it.

3 BY MR. BOWMAN:

4 Q Mr. Kegler, in January '77, this past January,  
5 you made a second search, is that true, you and your  
6 assistant, of the records?

7 A This is December '76 and January '77 is one and  
8 the same search, Counselor.

9 Q Okay. All right. Now, clear. I don't want to  
10 dispute anything where there may be my lack of understanding.

11 You made one search in December '76, and that  
12 carried over to January '77?

13 A A portion of it did, yes, that's correct.

14 Q Now, were there documents that you could not  
15 find when you made this search, this last December and  
16 January?

17 A Yes.

18 Q And what were those documents?

19 A One check.

20 Q What was the date of that check?

21 A You got me at a disadvantage. You have some of  
22 my papers there, Counselor, and I am not able to --

23 Q Are you missing a voucher for February 8th, 1975?

24 A I believe that was the one, but let me double check.

25 Q Are you missing --

1 THE COURT: Let him find out first, to answer  
2 your question.

3 THE WITNESS: That's correct, February 8 is  
4 the one that is missing.

5 THE COURT: 1975?

6 THE WITNESS: 1975, that's correct, your Honor.

7 THE COURT: That check is for how much?

8 MR. BOWMAN: If he knows.

9 THE COURT: It would have been a biweekly  
10 check, \$122.

11 BY MR. BOWMAN:

12 Q You say there was a February 8th check, but you  
13 can't find -- what record can't you find with respect to the  
14 February 8th day?

15 A I can't find the check itself.

16 Q How do you know there was a payment made on  
17 February 8th?

18 A The ledger indicates this to be true, and the  
19 claim record card from the local office indicates that the  
20 payment was made in person on that date.

21 Q And you made a diligent search to try to locate  
22 that check?

23 A Yes.

24 Q And is it true that you also cannot locate a form  
25 called a UC46 for that day?

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1 A That is also correct.

2 THE COURT: Before we leave that, what is a  
3 UC46? I don't know what that is.

4 THE WITNESS: That is the biweekly  
5 certification, the so-called continued claim form,  
6 your Honor.

7 THE COURT: Is that where the man comes in, -  
8 or the woman comes in and collects his check, and  
9 signs for his check?

10 THE WITNESS: Yes, sir.

11 THE COURT: So that UC46 with his signature  
12 on it is not in your records; is that correct?

13 THE WITNESS: That's correct.

14 MR. BOWMAN: So that, Mr. Kegler, is it fair  
15 to say that you have a notation on your ledger for  
16 a particular day, namely, February 8, 1975, and  
17 you don't have the check and you don't have the  
18 claim form?

19 THE COURT: Your answer, verbally?

20 THE WITNESS: That's correct -- I'm sorry.

21 BY MR. BOWMAN:

22 Q Where can they be?

23 A I would presume --

24 THE COURT: Not what you would presume. Do  
25 you know?

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1 THE WITNESS: No, I don't.

2 BY MR. BOWMAN:

3 Q So that the testimony that you are giving before  
4 the jury in this case is based upon your records; is that  
5 true?

6 A That's correct.

7 Q That you brought to court here?

8 A That's correct.

9 Q And the fact is that there are some records that  
10 are missing?

11 A True.

12 MR. BOWMAN: I object to the offer, your Honor.

13 THE COURT: Do you wish to be heard outside  
14 the presence of the jury?

15 MR. BOWMAN: I wish to be heard at side bar,  
16 your Honor.

17 (The following transpired at the Bench:)

18 MR. BOWMAN: Your Honor, my objection -- I  
19 have several grounds. First of all, according  
20 to the rule, as I understand the Government's  
21 offer, they are attempting to prove the  
22 non-existence of Burroughs' presence at the  
23 unemployment office, through their record, because  
24 they have no notation in their records for that day.

25 This witness testified that there are records

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1 missing from a date just prior to that.

2 Therefore, I submit to the Court that that is  
3 certainly unreliable, and the inference to be  
4 drawn from the non-existence of a February 18,  
5 1975 entry is not a fair inference, because there  
6 is no indication of the reliability of the search.

7 Secondly, Mr. Kegler has no personal -- -

8 THE COURT: I think we should be heard  
9 outside the presence of the jury on this matter.

10 MR. BOWMAN: Okay.

11 (The following transpired in open court:)

12 THE COURT: We will excuse the jury for a  
13 few minutes.

14 I think we should take our recess, and  
15 counsel can discuss this matter openly, in the  
16 absence of the jury.

17 The jury may now be excused for their usual  
18 recess.

19 (In the absence of the jury.)

20 THE COURT: All right, Counselor.

21 MR. BOWMAN: As I stated at side bar, I  
22 believe the Government's offer is to show that  
23 Joseph Burroughs did not go to the unemployment  
24 office on February 18, 1975, and they intend to --  
25 your Honor, I would like to make my argument

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1 without the witness present.

2 Could we have the witness excused for my  
3 argument?

4 THE COURT: Why?

5 MR. BOWMAN: I just don't know what the  
6 argument may involve, and it might influence his  
7 testimony in some way. I have no reason to believe  
8 that Mr. Kegler isn't an honorable man -- it is  
9 just that I have no idea what might be said by  
10 the Government in response to the argument.

11 THE COURT: I can't see any harm in him  
12 remaining. The records are there. They speak  
13 for themselves. He won't change the records.

14 MR. BOWMAN: Certainly. I won't press it.

15 So they want to prove that Joseph Burroughs  
16 did not go to the unemployment office, and they  
17 want to do that because they have a ledger card  
18 which shows that there is no notation of any  
19 payment to Joseph Burroughs on February 18, 1975.

20 Mr. Kegler has testified that he has done a  
21 search on two occasions; one before the second  
22 trial; one before this trial; and that still there  
23 are some records missing.

24 And the records that are missing are the  
25 underlying records, this UC46 claim form, and the

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1 cancelled check for February 8, 1975 payment.

2 Now we submit that that is so close to the  
3 day in question, that there is no reliable  
4 showing or trustworthiness as required by the  
5 rules, for the jury to be able to draw the  
6 inference that there should have been a record  
7 on February 18th. And because there wasn't, that  
8 it means that Burroughs didn't go to the  
9 unemployment office.

10 So the inference I submit to your Honor that  
11 the Government is asking the jury to draw is an  
12 unfair one. Because we don't know if in fact all  
13 the records have been accounted for.

14 THE COURT: We know some haven't been accounted  
15 for, because he does not have them.

16 MR. BOWMAN: That's right.

17 THE COURT: At the moment, at least.

18 MR. BOWMAN: That is exactly the problem I  
19 am faced with.

20 Now, as part of the same problem, and what is  
21 a separate ground of objection, is that my client  
22 is being denied his right to confront the  
23 witnesses who were present on February 18, 1975,  
24 at the unemployment office.

25 There are certain rules, I understand, and we

1 have the business records exception, which I also  
2 feel counsel has not properly qualified these  
3 records as business records, because of his  
4 preliminary questions.

5 But, even assuming -- which I do not  
6 concede -- that these are admissible as business  
7 records, under the hearsay rule, my client is  
8 still being denied his right to confront the  
9 witness who was there on February 18th, and can  
10 testify, if there is such a person, that Joseph  
11 Burroughs did not come into that office on  
12 February 18, 1975.

13 I am just left with the cross examination --

14 THE COURT: You could have subpoenaed them  
15 if you wanted them.

16 MR. BOWMAN: Nevertheless, it is not the  
17 defendant who has the burden of proof in this case.

18 THE COURT: I understand. But if you wanted  
19 to use them as rebuttal witnesses, they are  
20 available to you. You can subpoena them.

21 MR. BOWMAN: The only notations I have from  
22 the ledger cards are initials. I don't have names.

23 THE COURT: You have got an investigator to  
24 investigate who those names are, who was on the  
25 payroll at Bridgeport at that time.



THE COURT: It is not your burden at this time, but if you want to rebut it it might be your burden, as far as offering evidence.

MR. BOWMAN: My point is, your Honor, that the only evidence I can confront that is being offered by the Government are records, are pieces of paper. And because of that my client is being denied his Sixth Amendment right to confrontation.

And it goes to the admissibility, because the front question on admissibility is whether or

1 not the records are trustworthy, and whether or  
2 not there has been a diligent and proper search,  
3 and a complete search.

4 My point is, on February 8th, there are  
5 missing records. There is nothing to show that  
6 on February 18th there also isn't missing records.

7 THE COURT: We haven't gotten to that yet.  
8 You haven't asked him about February 18th.

9 MR. BOWMAN: I can ask him now.

10 THE COURT: Your argument is -- there is  
11 nothing in the record to justify your argument.

12 BY MR. BOWMAN:

13 Q Mr. Kegler, have you found any records with respect  
14 to February 18, 1975, relating to Joseph Burroughs?

15 A There are no records with respect to February 18,  
16 1975. There is no claim filed at that time.

17 Q In other words, you are testifying that because  
18 you have no records of any claim filed on that day, you are  
19 testifying from the records?

20 A Yes. I don't know, your Honor, how far I am  
21 permitted to go?

22 THE COURT: The jury isn't here, so greater  
23 latitude is allowed. The Court will be glad to  
24 hear you.

25 THE WITNESS: The records indicate that for

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1 the week ending January 25th -- sorry, the week  
2 subsequent to that, the two week period ending  
3 February 8, 1975, Mr. Burroughs received his  
4 last check on this 26 week duration.

5 THE COURT: On what date?

6 THE WITNESS: That would be on February 10th,  
7 he received his check.

8 THE COURT: This check is dated the 8th?

9 THE WITNESS: The check is dated the  
10 calendar week ending the 8th, right, your Honor.

11 THE COURT: And he picked it up two days  
12 later?

13 THE WITNESS: On the 10th, that's correct.

14 THE COURT: Was the calendar week on a Sunday?

15 THE WITNESS: On a Saturday. Sunday through  
16 Saturday is a calendar week.

17 THE COURT: And he picked it up on Monday,  
18 the 10th?

19 THE WITNESS: Or whatever day that was. I  
20 don't have a calendar.

21 THE COURT: And is there a signature of his  
22 that would indicate that?

23 THE WITNESS: This is the claim document and  
24 check that I am missing.

25 THE COURT: In other words, his signature,

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1 signing for that check, is missing?

2 THE WITNESS: Right. I can't produce the  
3 document.

4 THE COURT: How about on the prior day?

5 THE WITNESS: I can speculate.

6 THE COURT: How about January 25, '75?

7 THE WITNESS: Yes, I have that one. I have  
8 a certification and the corresponding check.

9 MR. BOWMAN: What date was that, your Honor?

10 THE COURT: January 25, '75.

11 May I see that, please?

12 Where would he sign -- showing you  
13 Government's Exhibit 22-A for identification --  
14 where would he sign that as having received the  
15 check?

16 THE WITNESS: This is the document we would  
17 be concerned with. Remove that paperclip; it would  
18 be helpful to you.

19 THE COURT: That is "Joe Burroughs" in the  
20 left-hand corner of the form. And from that, when  
21 would it be indicated to you that he actually  
22 received that one?

23 THE WITNESS: On January 27th.

24 THE COURT: On the 27th? It would be dated  
25 the 25th; is that correct?

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1 THE WITNESS: That's correct. The check  
2 would be dated --

3 THE COURT: All right. When is the next  
4 one to follow that?

5 THE WITNESS: That is the one -- this  
6 February 10th, the one that is missing.

7 THE COURT: And you said you could only  
8 imagine or guess or speculate -- since the jury  
9 isn't here, what knowledge do you have of this  
10 particular check that is missing?

11 THE WITNESS: In conducting our search we  
12 did come across a check number, and the check  
13 number was the one in question, and it was made  
14 out to someone else, leading us to conclude that  
15 the individual who issued this check, one check  
16 or the other, misstated the check number on the  
17 check machine tape in the local office.

18 This does happen occasionally, it will show up.

19 You have to be familiar with that system to  
20 understand it. The check will show up and  
21 eventually we will be able to straighten them out.  
22 But, Lord knows when. This could be a month --  
23 this possibly, too, is the reason why we can't  
24 find that particular claim in question. It is  
25 being worked on now.

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1 THE COURT: This is two years ago, '75. Now  
2 we are in February '77. Two years have elapsed?

3 THE WITNESS: Two years have elapsed, your  
4 Honor, but keep in mind that up until -- oh, boy,  
5 maybe like six months ago, we were still in the  
6 process of catching up, getting out of this  
7 confused state that I guess was mentioned at one  
8 time along the line.

9 Like everything else, once you get behind,  
10 and the load hasn't decreased appreciably, once  
11 you get behind, it obviously takes a long time to  
12 work on these backlogs.

13 THE COURT: From your record of Joseph  
14 Burroughs, do you know when he received his last  
15 check?

16 THE WITNESS: The very last check?

17 THE COURT: Yes.

18 THE WITNESS: That would be the week ending  
19 April 24, '76.

20 THE COURT: Did he continue to receive checks  
21 all through '75, up until April '76?

22 THE WITNESS: No, he didn't.

23 THE COURT: All right. When was his last  
24 check received during this time span, from this  
25 26 week period?

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1 THE WITNESS: The last check was received on  
2 this February 10th.

3 THE COURT: That was the last one?

4 THE WITNESS: For the 26 week duration.

5 THE COURT: That was the end of the 26 week  
6 period? That was going to be his last check,  
7 from your records?

8 THE WITNESS: On that program, yes.

9 MR. BOWMAN: What date?

10 MR. PICKERSTEIN: February 10th.

11 THE COURT: Was the program extended, to  
12 your knowledge?

13 THE WITNESS: Yes, it was.

14 THE COURT: For how many weeks?

15 THE WITNESS: One 13 week extension, after  
16 the first 26, then a 26 week extension after that  
17 13.

18 THE COURT: But he didn't come in after  
19 February 10th to take his next 13 week period;  
20 is that right?

21 THE WITNESS: That's correct.

22 THE COURT: He didn't continue to come in  
23 for his 26 week period continuously from that date?

24 THE WITNESS: He had no more on the 26.

25 THE COURT: You said they extended it 13 weeks,

77A

1 then 26 more.

2 THE WITNESS: Yes, I know. Those ran  
3 concurrently. He got the 13 --

4 THE COURT: When did he start that?

5 THE WITNESS: That was on 8/4.

6 THE COURT: August 4, '75?

7 THE WITNESS: Yes, and received payment for --  
8 the week ending, calendar week ending August 2nd,  
9 '75.

10 THE COURT: So from February 10th until  
11 August 4th he didn't come into your office,  
12 according to your records?

13 THE WITNESS: That's right.

14 THE COURT: All right. Anything further you  
15 want to state, Counselor?

16 BY MR. BOWMAN:

17 Q Mr. Kegler, you say he came in on February 10th.  
18 You are basing your testimony on the ledger; is that right?

19 A The ledger and the claim record from the Bridgeport  
20 Office, Counselor.

21 Q Could you show me what that is?

22 A Yes, that is this one here.

23 Q This is a UC46. What is that, something that he  
24 signs?

25 A Yes, that would be this form, like this.

78A



1 Q Something like Exhibit 22-E?

2 A Well, I think there are several here.

3 Q We have several. It is the claim form with his  
4 signature on it?

5 A Yes.

6 Q And you are missing that?

7 A Yes.

8 Q And you are also missing the cancelled check?

9 A That corresponds to that two week period, right.

10 Q And you have no record showing him coming in  
11 after February 10th; is that right?

12 A Right.

13 Q Until what month, sir?

14 A Until August.

15 Q And his benefits were extended after February,  
16 from when to when?

17 A We are talking now about this week of February 8th,  
18 calendar week beginning February 8th?

19 Q That's right.

20 A Well, immediately subsequent to that -- in other  
21 words, effective the 9th of February, a new benefit period  
22 would be established, sir.

23 Q How long would that last?

24 A For 13 week duration.

25 MR. BOWMAN: Nothing further, your Honor.

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1 MR. PICKERSTEIN: Your Honor, in the first  
2 place I believe that the witness has testified in  
3 accordance with the previous holding of the  
4 Court of Appeals, that he has conducted a  
5 diligent search. The ledger files themselves,  
6 all the records that the Department of Labor,  
7 their home office, that they were unable to come  
8 up with, were two documents. And one of the  
9 documents is the February 8th check, and the  
10 accompanying signature.

11 I don't think that alone is sufficient to  
12 make these records so unreliable as to exclude  
13 them.

14 Indeed, the witness testified that there is  
15 a ledger, and that he bases the information both  
16 by the ledger, which is Government's Exhibit 22-K,  
17 and a claim record form from the Bridgeport Office,  
18 which is Government's Exhibit 22-H.

19 And based upon that, and his familiarity with  
20 the records, and based upon his 16 years of  
21 experience, he can testify as to when the last  
22 payment was made.

23 So it seems to me that the fact that the  
24 particular check for February 8th, payable  
25 February 10th is missing, does not make either the



1 search or the documents themselves so unreliable  
2 as to exclude them, under the holding, under the  
3 law of this case.

4 Certainly the witness can testify that from  
5 the records that he has -- and it seems a matter  
6 that goes perhaps to the weight rather than the  
7 admissibility -- that on February 18, 1975 there  
8 is no record of payment to Joseph Burroughs. And  
9 indeed, on February 10, 1975 the man exhausted  
10 his unemployment compensation.

11 It was renewed, but in fact he did not come  
12 back for payments on the renewed or extended  
13 benefits until the month of August 1975.

14 Additionally, your Honor, the Government  
15 would claim that the records that this witness has  
16 brought with him do establish a pattern. And  
17 while there is one check missing, certainly we  
18 have the week of January 25th, and we have the  
19 preceding week -- or the preceding two week  
20 period, which would be January 11, 1975, to show  
21 a payment -- and it shows a continuing pattern  
22 and regularity in the Department of Labor as to  
23 Joseph Burroughs.

24 THE COURT: What do you say to the Court of  
25 Appeals' statement: "Judge Zampano decided to

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1 allow Glennon" -- he was the man who testified,  
2 apparently, in place of this witness at the last  
3 trial -- "Judge Zampano decided to allow Glennon  
4 to testify on the basis of the incomplete file.  
5 And he explained to defense counsel that the  
6 extent of the records was a question of weight  
7 for the jury, which the defense would be permitted  
8 to explore on cross examination."

9 The Court of Appeals said "This was error."

10 MR. PICKERSTEIN: I think that's correct,  
11 your Honor, but I think we have established the  
12 trustworthiness of the files through this witness.

13 There are two factors to consider. First of  
14 all, Mr. Glennon was not the individual who  
15 conducted the search; Mr. Glennon was the manager  
16 of the New Haven Office of the Unemployment  
17 Compensation Division, who in fact had been sent  
18 by Mr. Pescatelli, the individual to whom the  
19 Government sent the subpoena with the records.  
20 We were unaware of that fact until Mr. Glennon  
21 in fact appeared. This witness, in fact, conducted  
22 the search.

23 Mr. Glennon testified very clearly in the  
24 second trial that he didn't conduct the search;  
25 he was simply presented with a package of



1 documents which he brought to court.

2 I think that is my first response.

3 THE COURT: In other words, he hadn't made  
4 the search?

5 MR. PICKERSTEIN: That's correct, your Honor.  
6 And he had no knowledge as to who made the search.  
7 He was simply given a package of documents --  
8 these are Burroughs' records.

9 Here we have the witness who not only made  
10 the search at the request of the Government, but  
11 who was responsible for the maintenance of these  
12 very records.

13 THE COURT: Have you established from this  
14 witness at this point the pattern, from his  
15 records, of the biweekly checks that came over a  
16 period of time leading up to the 10th of February?

17 MR. PICKERSTEIN: No, I have not, your Honor.  
18 I was going to get to that.

19 THE COURT: Suppose we find out if there is  
20 such a pattern, before we call the jury back.

21 BY MR. PICKERSTEIN:

22 Q Mr. Kegler, from the records you brought with you,  
23 is there a two week pattern of payments to Mr. Burroughs,  
24 starting with the documents you brought with you?

25 A Well, I can recite --

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1 THE COURT: Why don't you show him with the  
2 calendar, and take these dates to help him for  
3 this purpose?

4 Do you have a calendar there? There is a  
5 payroll calendar; it is not in evidence, but it  
6 may help him for this particular purpose.

7 MR. PICKERSTEIN: It is Government's Exhibit  
8 21 for identification.

9 THE WITNESS: Well, we have to begin -- if  
10 you want to start, we have to begin with August  
11 '74.

12 THE COURT: All right, begin with August '74  
13 and follow it through.

14 THE WITNESS: His appearances were on  
15 August 26th -- these are all the calendar year '74.

16 THE COURT: All right.

17 THE WITNESS: September 9th, September 23rd,  
18 October 8th --

19 THE COURT: September 23rd --?

20 THE WITNESS: October 8th, October 21st,  
21 November 4th, November 18th, December 2nd,  
22 December 16th, December 30th.

23 Then in 1975, January 13th, January 27th,  
24 February 10th.

25 MR. BOWMAN: What were you reading from,

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1 Mr. Kegler?

2 THE WITNESS: From the ledger.

3 BY MR. PICKENSTEIN:

4 Q Starting with January 13th, 1975 have you a  
cancelled check and a UC46 for that day?

6 A I'm sorry?

7 Q Starting with the first payment in January of  
8 1975, on the 13th, have you the cancelled check issued to  
9 Mr. Burroughs for that day?

10 A Yes.

11 Q With you?

12 A Yes.

13 Q What exhibit is that, sir?

14 A 22-A.

15 Q Government's 22-A. Does that have attached to it  
16 the claim form, the UC -- whatever?

17 A Yes.

18 Q Does it have a signature, "Joe Burroughs" on it?

19 A Yes.

20 Q The date on that is January 13, 1975; is that  
21 right?

22 A The 25th.

23 Q Well, I'm concerned with January 13, 1975.

24 A On the 13th, I have copies of that one.

25 Q And we have one for the 25th; is that right? And

85A

1 do we have the one for the date --

2 THE COURT: Let's start with the first one,  
3 the January 13th check. Is it dated on that date,  
4 or is that the date it was picked up?

5 THE WITNESS: January 13th was the date it  
6 was picked up.

7 THE COURT: Picked up?

8 THE WITNESS: Yes, your Honor.

9 THE COURT: What was the date?

10 THE WITNESS: The week ending date for that  
11 check?

12 THE COURT: Yes.

13 THE WITNESS: January 11, 1975.

14 THE COURT: January 11, '75?

15 THE WITNESS: Yes.

16 MR. BOWMAN: You don't have that check, do you?

17 THE WITNESS: I don't have it, no.

18 THE COURT: Where is that check?

19 THE WITNESS: Well, it would be in our  
20 records.

21 THE COURT: You weren't asked to bring that?

22 THE WITNESS: Yes, I was. And this is what  
23 is confusing, because that was among these papers.

24 MR. PICKERSTEIN: Here is January 13th, right  
25 there, 22-B.

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1 THE WITNESS: There are so many papers  
2 spread out here --

3 THE COURT: The January 13th check is for  
4 the week ending January 11, '75, right?

5 THE WITNESS: And the prior week, your Honor,  
6 since there is a double payment -- in other words,  
7 a biweekly payment, our machinery and processing  
8 is geared to show the second of this week ending  
9 date, but this is biweekly.

10 THE COURT: When was that check picked up?

11 THE WITNESS: On the 13th of January.

12 THE COURT: The 13th. Now, tak'ng the next  
13 one, January 27th, for what week ending was that  
14 check?

15 THE WITNESS: The week ending January 25th,  
16 and the preceding week.

17 THE COURT: All right. And that was picked  
18 up on what date?

19 THE WITNESS: January 27th, your Honor.

20 THE COURT: And that is Number 22 what?

21 THE WITNESS: "A."

22 THE COURT: 22-A?

23 And then the one of February 10, '75 is the  
24 one you don't have?

25 THE WITNESS: That's correct.

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1 THE COURT: Do you have a ledger for  
2 February 10, '75, a ledger entry?

3 THE WITNESS: Yes. That would have been  
4 produced, of course.

5 THE COURT: May I see your ledger entry for  
6 that particular check?

7 THE WITNESS: That would be here (indicating).

8 THE COURT: Will you point to that again,  
9 please?

10 THE WITNESS: Here (indicating).

11 THE COURT: How do you know that is  
12 February 10, '75? "2/10"?

13 THE WITNESS: And the last digit of the  
14 calendar year, "5", representing '75.

15 THE COURT: '75.

16 And for that record then you do have an  
17 entry, and he received \$122; is that right?

18 THE WITNESS: That's correct, your Honor.

19 THE COURT: And that closed out his claim?

20 THE WITNESS: Right.

21 THE COURT: Zero?

22 THE WITNESS: Yes, sir.

23 THE COURT: That's 22-K.

24 And the thing that you have missing is the  
25 check, Number One, and secondly his receipt or

88A



1 signing for that check, Number Two; is that  
2 correct?

3 THE WITNESS: Right.

4 THE COURT: But other than that, the record  
5 of the check on your ledger is present and intact;  
6 is that correct?

7 THE WITNESS: Sorry. Repeat that again? -

8 THE COURT: The record of your ledger is  
9 present and intact on 22-K?

10 THE WITNESS: Yes.

11 THE COURT: All right.

12 THE WITNESS: It would have been copied from  
13 the original document, the one I was unable to  
14 locate.

15 THE COURT: In light of that, what is your  
16 position?

17 MR. BOWMAN: Your Honor, as your Honor knows  
18 from the testimony, the crucial date is the date  
19 of the pickup, not the day that the check would  
20 be available for somebody to pick them up.

21 And correct me if I am wrong, Mr. Kegler,  
22 the only record to show that somebody picked it up  
23 is the UC46, and that is missing for February 10th?

24 The ledger draws its information from those  
25 underlying documents. We claim it is not

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1 trustworthy evidence, because it is so close in  
2 time to February 18th, and the cancelled check  
3 and the voucher is missing, and therefore I claim  
4 this witness cannot testify to when that check  
5 was picked up with any reliability.

6 THE COURT: Doesn't it demonstrate, at least,  
7 part of the proof in this respect, Counselor:  
8 namely, that at least the biweekly check, and the  
9 last one that was coming to him, was dated  
10 February 10, '75. And I presume it would follow  
11 from the pattern here that a person picks them up  
12 at least within two days of the week ending for  
13 which they are made out, according to this pattern  
14 of figures?

15 MR. BOWMAN: But that is exactly what is  
16 in dispute here in this courtroom, your Honor,  
17 whether or not on February 18th Joe Burroughs went  
18 to the unemployment office and picked up the check.

19 So, regardless of when it was available, the  
20 question is when it was picked up.

21 THE COURT: I realize that would be most  
22 desirable. I agree with you on that point. But  
23 isn't here the question, is the ledger information  
24 trustworthy in and of itself?

25 Do you want to be heard, Counselor?

90A



1 MR. PICKERSTEIN: If I may, for one moment,  
2 your Honor. Perhaps I can ask the witness one  
3 question.

4 BY MR. PICKERSTEIN:

5 Q Government's Exhibit 22-A for identification;  
6 can you tell us what that is?

7 A That is the claim record card which is kept in  
8 the local office, to record payments made. It is maintained  
9 there. There is a running balance, and any other notations  
10 that might be pertinent to the claim history.

11 Q When a man comes in the unemployment office is a  
12 notation made on 22-H for identification, that he was there?

13 A Yes.

14 Q And is there such a notation for February 10, 1975?

15 A Yes.

16 THE COURT: Where is it?

17 THE WITNESS: Right here, your Honor,  
18 (indicating). They are marked up locally for the  
19 weeks that they cover. Whereas, on the ledger  
20 they are picked up from this document. It would  
21 only indicate the last week.

22 THE COURT: What is this, "2/10"?

23 THE WITNESS: That is the date, February 10th.

24 THE COURT: Why should there be two lines  
25 with "2/10" on it?

9/A

1 THE WITNESS: Because he was paid for two  
2 weeks on that date, your Honor.

3 THE COURT: In other words, where, for  
4 example here it is "1/27" and "1/27" --

5 THE WITNESS: He was paid for these  
6 corresponding week endings on that date.

7 THE COURT: I see.

8 Does counsel have any questions about this  
9 document?

10 MR. BOWMAN: If I may have a moment to look  
11 at it, your Honor?

12 BY MR. BOWMAN:

13 Q You have two notations here, on 22-H, "2/10 P"  
14 and "2/10 P", and you have neither one of those checks?

15 A It was one check.

16 Q I see. It was earned for a four week period?

17 A A two week period.

18 THE COURT: Biweekly.

19 THE WITNESS: Biweekly.

20 BY MR. BOWMAN:

21 Q I see. They are all double dated here, and you  
22 don't have that check?

23 A Right, we established that, I am quite sure.

24 Q Okay. And you are missing also the UC46, and that  
25 would be the form that Joe Burroughs would have signed?

92A



1 THE WITNESS: There is -- can I say, I'm not  
2 sure, you know, not 100 percent certain why I am  
3 here, for that matter -- but to get an entry on  
4 this ledger, your Honor --

5 THE COURT: 22-K?

6 THE WITNESS: Yes. A UC46 must be available,  
7 because this is the vehicle that is used to put  
8 that data on the ledger.

9 THE COURT: So without a UC46, it would never  
10 appear on the ledger?

11 THE WITNESS: No way. There is no way.

12 BY MR. BOWMAN:

13 Q So the ledger draws all of its information from  
14 supporting documents, like the UC46 claim form, and  
15 cancelled check?

16 A Exactly.

17 Q And you are not the person who fed that particular  
18 information into the computer, I take it?

19 A Well, no.

20 Q And you don't have any first-hand knowledge  
21 whether or not the person who fed the information for the  
22 ledger into the computer was looking at the check or not,  
23 do you?

24 A The person that fed this into the computer was  
25 not looking at the check; the person that fed this into the

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1 computer put a stack of these U46's on a sort tray, and they  
2 popped in and caused the markings on this ledger.

3 THE COURT: All right. I am satisfied that  
4 it is admissible, Counselor.

5 Your objection is overruled.

6 Short recess before proceeding.

7 (Recess.)

8 (In the absence of the jury.)

9 THE COURT: How are we progressing?

10 MR. PICKERSTEIN: Your Honor, just a few  
11 more minutes with Mr. Kegler.

12 I have one additional rebuttal witness --  
13 no more than five minutes -- and then the  
14 Government will rest.

15 MR. BOWMAN: Your Honor, I want to be clear  
16 that my objection to Government's Exhibits 22-H  
17 and 22-K, that my objection is on the record.

18 THE COURT: Your objection is overruled.

19 You will have to make it clear to the jury  
20 the relationship of this ledger and these other  
21 documents.

22 The record may disclose that the defendant is  
23 now in the courtroom.

24 Call the jury, please.

25 (In the presence of the jury.)

94A



1 THE COURT: Proceed, Counselor.

2 MR. PICKERSTEIN: Thank you, your Honor.

3 BY MR. PICKERSTEIN:

4 Q Now, Mr. Kegler, I show you Government's Exhibits  
5 22-H and 22-K. First, with respect to Government's Exhibit  
6 22-K, can you tell us what that document is, sir?

7 A It is a ledger card, an accounting ledger card,  
8 indicating the claimant's filing history.

9 Q What is the name of the claimant for whom 22-K  
10 is a ledger card?

11 A Joe Burroughs.

12 Q Now with respect to Government's Exhibit 22-H,  
13 can you tell us what that document is, sir?

14 A This is the so-called claim record card. This is  
15 the local office record of transactions with respect to  
16 claims for benefits.

17 Q Now, with respect to Government's Exhibit 22-H,  
18 is 22-H filled out every time a claimant comes into the  
19 unemployment office to claim a check?

20 A Yes, it is, Counselor.

21 Q And with respect to Government's Exhibit 22-K,  
22 can you tell us how the information that appears on that  
23 ledger card is in fact generated to be placed on the ledger  
24 card?

25 A The information on the ledger card, the one that is

95A

1 controlled in headquarters, the information is put on by  
2 use of computer, based on an individual's biweekly  
3 certification. In other words, the continued claim form.

4 Q So when an individual picks up a check, an  
5 unemployment compensation check, on a particular day,  
6 certain information is transmitted to the central office  
7 in Wethersfield?

8 A Correct.

9 Q Is that the information that then appears on the  
10 claim record card?

11 A Yes, that's correct.

12 Q And that is Government's Exhibit 22-K?

13 A Yes, it is.

14 Q And Government's Exhibit 22-H is the record that  
15 is maintained in the local unemployment office, concerning  
16 the individual's visits to that office; is that right?

17 A That's correct.

18 Q With respect to Government's Exhibit 22-H, in what  
19 office, if you know, sir, was that record maintained?

20 A Local Office 2, which is Bridgeport.

21 Q Now calling your attention, sir, to Government's  
22 Exhibit 22-K and 22-H, can you tell us, sir, whether or not  
23 Mr. Joseph Burroughs was paid an unemployment compensation  
24 check on February 18, 1975?

25 MR. ECWMAN: I object, only insofar as he can

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1 establish only what is on the record. Because  
2 that is what the witness is testifying to.

3 THE COURT: Why don't you offer it before you  
4 ask him to testify to it?

5 MR. PICKERSTEIN: I'm sorry, I stand corrected.  
6 I offer Government's Exhibits 22-H and 22-K.

7 MR. BOWMAN: I object. My objection is noted.

8 THE COURT: Objection overruled.

9 BY MR. PICKERSTEIN:

10 Q Now, can you tell us whether Mr. Joseph Burroughs  
11 was paid unemployment compensation on February 18, 1975?

12 MR. BOWMAN: My objection is that it is a  
13 full exhibit, and he can tell the jury what is  
14 on the card, but the inference or conclusion is  
15 something for the jury to draw, not for this  
16 witness.

17 THE COURT: Why don't you have him read from  
18 the card, starting January 1st, '75, starting with  
19 the biweekly period from January '75, leading up  
20 to the 18th, and have him testify before the jury  
21 as to what the record discloses?

22 MR. PICKERSTEIN: Very well.

23 BY MR. PICKERSTEIN:

24 Q Mr. Kegler, beginning with January 1st, 1975 can  
25 you tell us when the first biweekly period, biweekly

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1 unemployment compensation period ended?

2 A In this case it ended with the calendar week  
3 ending January 11th, 1975.

4 Q And do the records disclose whether or not an  
5 unemployment compensation check was issued to Mr. Joseph  
6 Burroughs for that period?

7 A The record indicates that, yes.

8 Q Have you that check that was issued to Mr. Joseph  
9 Burroughs for that period?

10 A Yes.

11 THE COURT: That is 22-B?

12 THE WITNESS: That is 22-B, your Honor, yes.

13 BY MR. PICKERSTEIN:

14 Q With respect to Government's Exhibit 22-B for  
15 identification, can you tell us what that packet contains?

16 A It contains the so-called Form UC46, which is  
17 the biweekly certification. In other words, the continued  
18 claim form that the individual files when he appears, or  
19 when she appears for benefits.

20 Q Does it also include a photocopy of a check?

21 A Yes, the other document is a photocopy of the  
22 check that corresponds to that.

23 MR. PICKERSTEIN: I offer Government's  
24 Exhibit 22-B for identification.

25 MR. DOWMAN: I have the same objection, your

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1 Honor.

2 THE COURT: Same ruling.

3 BY MR. PICKERSTEIN:

4 Q And when was that check issued to Mr. Joseph  
5 Burroughs?

6 A January 13th, '75.

7 MR. PICKERSTEIN: May I pass this to the  
8 jury, your Honor?

9 THE COURT: You may.

10 BY MR. PICKERSTEIN:

11 Q For the next biweekly pay period can you tell us  
12 when that ended?

13 A That ended with the two weeks ending January 25,  
14 1975.

15 Q Do the records disclose whether or not Mr. Joseph  
16 Burroughs was paid unemployment compensation for that period?

17 A The record shows that, yes.

18 Q Have you a check showing payment for that period?

19 A Yes, 22-A.

20 Q And what document does Government's 22-A for  
21 identification contain?

22 A The same documents as previously indicated: the  
23 biweekly certification and the check that corresponds.

24 MR. PICKERSTEIN: I offer 22-A, your Honor.

25 MR. BOWMAN: Same objection.

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1 THE COURT: Same ruling.

2 BY MR. PICKERSTEIN:

3 Q Can you tell us the date on the check that is  
4 Government's Exhibit 22-A?

5 A The date it was paid?

6 Q Yes, sir.

7 A January 27, '75.

8 Q And that was for what period, sir?

9 A January 18 and January 25th -- the week endings.

10 Q So for the two week period ending January 18th  
11 and January 25th?

12 A That's correct.

13 Q Do the records --

14 THE COURT: Excuse me. So that the record  
15 will be clear, January 18th to the 25th is one  
16 week.

17 THE WITNESS: I'm sorry. The weeks ending  
18 January 18th and 25th, your Honor.

19 THE COURT: That's clear.

20 BY MR. PICKERSTEIN:

21 Q Do your records disclose the date on which the  
22 next two week period ended?

23 A Yes, it would be February 8th, 1975.

24 Q And do your records disclose whether or not  
25 Mr. Burroughs was paid for the two week period ending

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1 February 8, 1975?

2 A The record shows that, yes.

3 Q Now, have you a supporting check and certification  
4 for that period?

5 A I do not.

6 Q Have you searched your records for that, sir?

7 A Yes, I have.

8 Q And have you been able to find that check?

9 A No, I have not.

10 Q You are referring -- when you say the records,  
11 you are referring to Government's Exhibit 22-K and 22-H?

12 A Right.

13 Q Now, with reference to Government's Exhibit 22-K,  
14 does that show whether or not with the payment of February  
15 10, 1975 Mr. Burroughs exhausted his regular unemployment  
16 benefits?

17 A Yes, the records so indicate.

18 Q Did he exhaust his unemployment benefits on that  
19 day?

20 THE COURT: What day?

21 BY MR. PICKERSTEIN:

22 Q On February 10, 1975?

23 A Yes, he exhausted his 26 week regular benefits.

24 Q Now, are you familiar with the extended benefits,  
25 sir?

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1 THE COURT: Before we get to this, do you  
2 have the ledger that shows that?

3 THE WITNESS: The benefits became exhausted  
4 with that payment made on the 10th -- yes, I do,  
5 your Honor.

6 THE COURT: What is the identification of that?

7 THE WITNESS: That is Exhibit 22-K.

8 THE COURT: 22-K? That has been offered as  
9 an exhibit?

10 MR. PICKERSTEIN: Yes, it has, your Honor.

11 THE COURT: Are you going to show that to the  
12 jury?

13 MR. PICKERSTEIN: I am, your Honor.

14 BY MR. PICKERSTEIN:

15 Q Do you know from your records, sir, whether or not  
16 Mr. Burroughs was set up or became eligible for so-called  
17 extended benefits?

18 A He would have been eligible for extended benefits  
19 beyond February 8th.

20 Q How do you know that, sir?

21 A Through the programs in effect at that time.

22 Q Do you know when he began to receive his extended  
23 benefits payments?

24 BOWMAN: He can testify from the records.

25 THE COURT: From the records.



1 BY MR. PICKERSTEIN:

2 Q From the record?

3 A Yes. He received his first check for the calendar  
4 week ending August 2, 1975.

5 Q What record are you looking at, sir?

6 A Well, this one particular one happens to be the  
7 local office record, the claim record card in the local  
8 office.

9 Q Is that Government's Exhibit 22-I for identifica-  
10 tion?

11 A Yes.

12 MR. PICKERSTEIN: I offer it, your Honor.

13 MR. BOWMAN: Objection. I have the same  
14 objection, your Honor.

15 THE COURT: Same ruling: 22-I.

16 BY MR. PICKERSTEIN:

17 Q With reference to Government's Exhibit 22-I, can  
18 you tell us from that record when it indicates that Burroughs  
19 received his first extended benefits payment?

20 A He received the first payment for the week ending  
21 August 2nd, 1975.

22 Q And do you have a check that corresponds with that  
23 payment?

24 A I have the certification for that week.

25 Q And what exhibit are you referring to, sir?

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1 A The one for the period August 2nd, '75.

2 Q Would that be Government's Exhibit 22-D, for  
3 identification?

4 A 22-D. I don't have the check that corresponds  
5 to that certification.

6 MR. PICKERSTEIN: I offer 22-D.

7 MR. BOWMAN: What date is that?

8 MR. PICKERSTEIN: August 2nd, 1975.

9 BY MR. BOWMAN:

10 Q Now, Government's Exhibit 22-D for identification  
11 is what you call a UC46?

12 A That's correct, Counselor, yes.

13 Q And you are saying you don't have the check?

14 A No, I don't.

15 Q Did you look for the check?

16 A Yes, I did.

17 Q And is the check missing?

18 A That particular check number is not missing, but  
19 it is for another individual. The number was transposed.

20 Q By whom?

21 A A person that paid the benefits for that particular  
22 week.

23 Q By one of the employees of the unemployment  
24 compensation office?

25 A Yes.

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1 Q So you are unable to locate the check that you  
2 paid?

3 A That's right.

4 Q Have you made an effort to locate it before you  
5 came to court today?

6 A Yes.

7 MR. BOWMAN: My objection is the same as  
8 to the others.

9 THE COURT: What is that form, UC46?

10 MR. BOWMAN: This is the form that the  
11 claimant signs when he comes in to receive a  
12 check, your Honor.

13 THE COURT: And this name in the left-hand  
14 corner, what is that?

15 THE WITNESS: That is the name of the  
16 claimant. Do you want me to read it?

17 THE COURT: It would be well to put it in the  
18 record.

19 THE WITNESS: I can't read it from that  
20 distance, your Honor, I'm sorry.

21 Joe Burroughs.

22 THE COURT: Joe Burroughs?

23 The objection is overruled, and it may be  
24 made a full exhibit.

25 From February 10th to August 2nd, to clear it

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1 up in my mind, were there any payments to Joe  
2 Burroughs by your office, of which you have a  
3 record?

4 THE WITNESS: The records do not show that,  
5 your Honor.

6 THE COURT: By that you mean they do not  
7 show --

8 THE WITNESS: They do not show any payments  
9 made between those dates, February 10th and  
10 August the 4th.

11 THE COURT: All right.

12 MR. PICKERSTEIN: May I pass these documents  
13 to the jury, your Honor?

14 THE COURT: You may.

15 BY MR. PICKERSTEIN:

16 Q Now, Mr. Kegler, when an individual is receiving  
17 unemployment compensation how frequently is he scheduled  
18 to go to the unemployment office to receive his payment?

19 A Biweekly -- every two weeks.

20 Q In 1975 how often did he go to the office to  
21 receive his payments?

22 A The same, every two weeks.

23 MR. BOWMAN: Your Honor, I am going to  
24 object -- well, I withdraw it. It is just for the  
25 purposes of establishing the procedures. I

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United States Court of Appeals  
FOR THE SECOND CIRCUIT

No. 77-1197

UNITED STATES OF AMERICA

Appellee

v.

WILLIAM EUGENE ROBINSON

Appellant

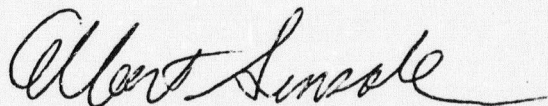
AFFIDAVIT OF SERVICE BY MAIL

Albert Sensale, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 914 Brooklyn Ave  
Brooklyn, New York

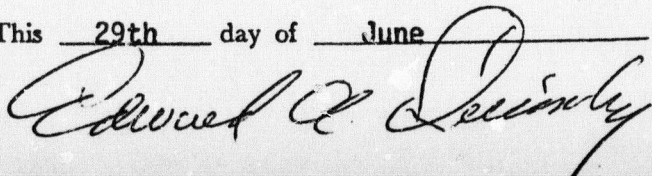
That on the 29th day of June, 1977, deponent served the within Brief for Appellee and Appendix  
upon Andrew B. Bowman, Esq.  
Federal Public Defender  
770 Chapel Street, New Haven, Connecticut 06510

Attorney(s) for the Appellant in the action, the address designated by said attorney(s) for the purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Post Office department within the State of New York.

Sworn to before me,



This 29th day of June 1977



EDWARD A. QUIMBY  
Notary Public, State of New York  
No. 24-3183500  
Qualified in Kings County  
Commission Expires March 30, 1977